that the second sentence of this proposed constitutional amendment is unnecessarily vague and could well trample on the rights of the several States of our great Republic.

I yield the floor.

EXHIBIT 1

MARRIAGE PROTECTION AMENDMENT

S.J. RES. 1

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

	Redefinition of Marriage	Creation of "Civil Unions" or "Domestic Partnerships"	Granting the Rights or Benefits of Marriage	Employee Benefits Offered by Private Businesses
State or federal courts can impose?	Sentence 1 prohibits.	Sentence 2 prohibits.	Sentence 2 prohibits.	Unaffected.
Legislature can make change?	Sentence 1 prohibits.	Decision of State Legislature.	Decision of Legislature.	Unaffected.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m. today.

Whereupon, the Senate, at 12:36 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

MARRIAGE PROTECTION AMENDMENT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the time is divided equally until 2:30.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I am proud to be an original cosponsor of S.J. Res. 1, the Marriage Protection Amendment.

I have heard people say that perhaps this issue should be left to the States. As a general rule, you will not find anyone who is a stronger supporter of States rights than I am. But this is a national issue the definition of marriage is and has been a national issue.

A May 22 Gallup Poll shows that a solid majority of Americans—58 percent—are opposed to granting gay marriages the same legal rights as traditional marriages. Additionally, same-sex couples are traveling across State lines to get married; as they do so, they will become entangled in the legal systems of other States, due to the full faith and credit clause of the U.S. Constitution. A State-by-State approach to gay marriage will be a logistical and legal mess that will force the Federal courts to intervene and require all states to recognize same-sex marriages. This is the only possible outcome.

The definition of marriage must be addressed, and it must be addressed now. The homosexual marriage lobby, as well as the polygamist lobby, shares the goal of essentially breaking down all State-regulated marriage requirements to just one: consent. In doing so, they are paving the way for legal protection of such repugnant practices as: homosexual marriage, unrestricted sexual conduct between adults and children, group marriage, incest, and bestiality. Using this philosophy, activist lawyers and judges are working quickly, State-by-State, through the courts to force same-sex marriage and other practices, such as polygamy, on our country.

In 1878, Reynolds v. United States, which upheld the constitutionality of Congress's antipolygamy laws, recognized that the one-man, one-woman family structure is a crucial foundational element of the American democratic society, and thus there is a compelling governmental interest in its preservation.

The eroding of State common-law marriage requirements comes with a price—If we can remove the opposite-sex requirement today, then what would keep us from removing the one-at-a-time requirement, or legal-age requirement tomorrow? In June of 2003, the U.S. Supreme Court signaled its likely support for same-sex marriage and Federal jurisdiction over the issue when it struck down a sodomy ban in Lawrence v. Texas.

The majority opinion extended the reach of due process and the 14th amendment of the U.S. Constitution to protect:

> . . . personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education,'' and then declared that ''[p]ersons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

In his dissent to Lawrence v. Texas, Justice Scalia pointedly cautioned:

> This reasoning leaves on pretty shaky grounds state laws limiting marriage to opposite-sex couples . . .

Additionally, there is a case pending in the Tenth Circuit where the petitioners are using the homosexual marriage lobby's success in Lawrence v. Texas to bolster their claim to a ''right'' to polygamous conduct and marriage.

Not only are Federal courts ruling in favor of such marriages, State courts are, too. In 2004, the Massachusetts Supreme Court ruled that same-sex couples could marry. The State's high court ruling clearly ignored tradition—even its own State legislature.

Massachusetts Governor Mitt Romney, in his testimony on June 22, 2004, before the Senate Judiciary Committee, stated:

> We need an amendment that restores and protects our societal definition of marriage, [and] blocks judges from changing that definition.

Not only has the Massachusetts court ruling affected that State, it has and will continue to open the floodgate of similar decisions by other State courts across the country.

Lawsuits are now pending in nine States, including my State of Oklahoma, asking the courts to declare that traditional marriage laws are unconstitutional. Same-sex couples from at least 46 States have received marriage licenses in Massachusetts, California, and Oregon and have returned to their home States. Many of these couples are now suing to overturn their home State's marriage laws. Unfortunately, using the equal protection and due process clauses in the U.S. Constitution, State and Federal courts have begun to strike down both the Federal and State Defense Of Marriage Act, DOMA, laws, which define marriage as between a man and a woman. The judicial branch is making this a Federal issue by stripping the power from the people's elected legislatures and forcing recognition of same-sex marriages.

Today, 45 States, such as Oklahoma, have statutory and/or constitutional protection for traditional marriage. On average, State constitutional amendments have passed with more than 71 percent of the vote, including with 76 percent in Oklahoma.

In societies where marriage has been redefined, potential parents become less likely to marry and out-of-wedlock births increase. According to Stanley Kurtz's 2004 article in the Weekly Standard, a majority of children in Sweden and Norway are born out of wedlock. Kurtz says:

> Sixty percent of first-born children in Denmark have unmarried parents—not coincidentally, these countries have had something close to full gay marriage for a decade or more.

Just last month, May, in a National Review Online article, Stanley Kurtz again addresses the issue saying:

> Europe's most influential sociologists are saying much the same things: Same-sex marriage doesn't reinforce marriage; instead, it upends marriage, and helps build acceptance for a host of other mutually reinforcing changes (like single parenting, parental cohabitation, and multi-partner unions) that only serve to weaken marriage.

In fact, liberal German sociologists, Ulrich Beck and Elisabeth Beck-Gernsheim, have openly and honestly expressed their eagerness to expand the welfare state and destroy the traditional family.

As Kurtz puts it, they want ''the government to subsidize the new, 'experimental' forms of family that emerge in the aftermath of the traditional family's collapse.''

When this issue was on the floor 2 years ago, many of my conservative colleagues made statements and observations that sufficiently framed this debate.

Senator ALLARD, the sponsor of this amendment, believes our Founding Fathers never envisioned that we would be changing the very structure of marriage and that we would be changing this core structure of society when he said:

> We are in danger of losing a several-thousand-year-old tradition, one that has been vital to the survival of civilization itself.

As my colleague from Kansas, Senator BROWNBACK, said: a small group of activists and judicial elite ''do not have a right to redefine marriage and impose a radical social experiment on our entire society.''

And my colleague from Alabama, Senator SESSIONS, said: ''If there are not families to raise . . . . children, who will raise them? Who will do that responsibility? It will fall on the State.'' This, to me, is one of the most troubling outcomes of the whole gay marriage debate—that the State will assume the parenting role of raising and financially supporting children.

Even Senator REID restated his personal view just yesterday, which he also expressed in 2004, when he said:

I'm personally opposed to same-sex marriage. I think a marriage should be between a man and woman.

So when 70 percent of the voters in Nevada amended their State constitution to restrict marriage to a man and a woman, and when they further amended it in 2002 with a State defense of marriage provision, with Senator REID's full support, some of us are confused now that Senator REID thinks restricting marriage to a man and a woman is ''writ[ing] discrimination into the Constitution.''

I would also like to point out that several prominent, respected religious voices in our country have spoken out against the idea of gay marriage and in support of the traditional definition.

According to ''Focus on the Family,'' headed by Dr. James Dobson, family is the fundamental building block of all human civilizations.

Chuck Colson, a man who most people in this body know quite well, was the founder of Prison Fellowship. He has this to say about the prospect of gay marriage:

The redefiners of marriage are working tirelessly. Their agenda is to tear down traditional marriage and make it meaningless by removing its distinctives.

The Reverend Billy Graham's son, Franklin Graham, acknowledged that:

There is a real movement for same-sex marriage. We could lose marriage in this country the way that we know it.

Finally, Dr. Jay Alan Sekulow, chief counsel for the American Center for Law and Justice, who has argued numerous cases before the Supreme Court recognizes that ''for centuries marriage has been defined as a union between one man and one woman.''

That is really what this is all about—marriage is between a man and a woman.

Civil authority did not create marriage. Marriage predates the state.

Civil authority chose to recognize it as the preferred union between a man and a woman, because it is reproductive in nature and propagates the survival of civilization itself.

We can dance around it and try to cater to certain groups, but I find something that has served me well for a number of years when something like this comes up, and that is to go back to the Law, go back to the Scriptures.

In Genesis 2:18, 21–24, God said:

It is not good that man should be alone; I will make him a helper comparable to him. . . . and the Lord God caused a deep sleep to fall on Adam, and he slept; and He took one of his ribs, and closed up the flesh in its place. Then the rib which the Lord God had taken from man He made into a woman, and He brought her to the man.

And Adam said, ''This is now bone of my bones and flesh of my flesh. She shall be called woman, because she was taken out of man.'' Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh. . . .

In Matthew 19:4–6, Jesus said:

Have you not read that He who made them at the beginning made them male and female, and for this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh? So then, they are no longer two but one flesh

The reason I read these two Scriptures is because they were quoted at a very significant event that took place over 47 years ago. It was when my wife and I were married.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I start off with a question. The question is, Why are we spending time on the floor of the Senate discussing this issue at this time? Is there anyone here unaware of the fact that Americans are bleeding in Iraq and Afghanistan? Why aren't we talking about that war?

Mr. INHOFE. Mr. President, the Senator asked a question. I will be glad to respond to that question.

Mr. LAUTENBERG. I will not at this point accept a question. I want to make my remarks just as the Senator from Oklahoma had a chance to make his remarks. Perhaps when we are finished I will be able to accommodate the Senator.

Why are we not focused on soaring gasoline prices and the toll it takes on family budgets? People who plan their lives in my area, New Jersey—a very crowded area—have had to buy their houses some distance from their jobs because they couldn't afford the housing. They calculated the fact they would have to drive an hour each way—not unusual—10 hours a week behind the wheel of the car. Now, with gas prices as they are, the advantage they had by buying a home at a distance is evaporating in front of them. Why aren't we talking about that?

Why aren't we talking about 46 million Americans without health insurance, every one of them worried about whether the next sickness is going to deprive them of their job, deprive them of their ability to feed and clothe their children and take care of them? Why aren't we talking about those things?

Why aren't we talking about extending stem cell research? I don't know whether other Senators have had the same experience that I have. Families come in with children who are sick with juvenile diabetes. If you ask those children what they want out of life, they say: I want to stop having to stick my finger all the time with a needle. I want to be able to do things just like other children.

I had a group of families with children with diabetes. I seated them around a table. By the way, the faces on these children are so beautiful. In their expressions they say: We would love you if you can help us. That is what they say. That is how I respond.

I am a professional grandfather. I have 10 grandchildren, the oldest of whom is 12 and the youngest of whom is 2. What do I want? My whole life is focused on what I can do for those kids as they grow and develop. When I look at those children, I ask the parents: Why are their faces so beautiful? They say: Because they are faces of want and need in a child, expressing that in that kind of face.

It tells you something about what we ought to be talking about and not spending our time on depriving somebody of an option that they are free to choose in this life. Why aren't we debating a measure to make sure the Government is ready for the next Katrina? They are worried about levees in California. They are worried about levees in other low-land States where they have some exposure. We are not talking about that. Who can forget the picture of the people on the roofs of their houses begging for someone to do something to save them? No, we are not talking about that. We do not want to talk about that.

Why aren't we preparing for a possible bird flu epidemic? We know that is a very serious topic.

Forget those topics, we are told. President Bush and the Republican leadership want Congress to drop everything to debate gay marriage. I have lots of visitors in my offices in New Jersey and here. Not one of them came to talk to me about gay marriage. They came to talk to me about health insurance. They came to talk to me about their pensions disappearing. They talk to me about their inability to afford their children's education when they want to prepare for a career. They talk about the burden of gas prices. That is what they want us to do something about. They are not discussing gay marriage. They are not in there discussing opening up the Constitution to amendment.

If we pass this amendment, history will record for the first time ever that we wrote discrimination into the United States Constitution. Think about that, the first time we have ever put discrimination against anyone in our Constitution.

In the Bill of Rights, every amendment is written to expand individual rights. That is what our Constitution is about. It is a wonder, the thinking of our forefathers. The Bill of Rights was first signed in New Jersey. If you look at all the amendments to the Constitution, only once did we restrict rights. That was Prohibition. And it did not take long to repeal that. The American people were not going to obey the law.

They violated it in every way. Why create laws that cannot mean anything to people?

President Bush held an event on Monday night with supporters of this amendment. At that event, the President did something totally irresponsible. It is hard to believe a President of the United States said what he said. He rallied his right-wing audience against our Nation's court system.

Now, we talk here about separation of powers and how important it is that the three legs of Government are able to exercise their obligations. The President went so far as to say that the American courts are ''imposing their arbitrary will on the people.'' How about when the Court imposed its arbitrary will on the election of a President? What was said then? To suddenly say that the courts have no jurisdiction of their own, free of criticism from the President of the United States, is the President saying our courts do not follow the law? Could people quote the President to justify ignoring a court decision, just to score political points with a narrow interest group?

The President chooses to undermine our Nation's system of courts and laws. It is a dangerous form of political pandering.

This constitutional amendment would not just ban same-sex marriages. It also threatens civil unions, domestic partnership laws, laws passed by States to recognize relationships and conferring legal rights between partners. Is our goal to strip all of these relationships of their dignity?

Once the Federal Government starts regulating marriage, what is next? What is going to stop Congress from acting as the morality police and prohibit people from getting married unless they pledge to have children or unless they pledge to restrict the number of children they have? What is going to stop this body from outlawing divorce?

I don't think the actual motive for this amendment is morality. The motive, as I see in this amendment, is pure raw politics. Republicans have their backs against the wall. So look what the people think of the President of the United States and the job he is doing. They think poorly of him. If they had the right, they would fire him.

When I was running a company, before I was running for the Senate, if I thought so poorly of someone, I would fire him. I would not keep him.

No, this is a salvage operation for the Republican Party. We are debating this amendment now because it is an election year. That is why. Why did we have this debate in 2004 and this year but not in 2005? Let's defer this until 2007. I am willing to do that. We can discuss it in a year, when there is not an election in the offing.

This is simply political gay-bashing. That is the mission, try to ''husband'' the resources you have, the support you have, and pick on a group of people. The backers of this amendment want to drum up hysteria where none currently exists. They want to change the subject away from the issues such as Iraq and gas prices. It is a shameful attempt to divide the American people for political gain.

Today, the 6th of June, is the anniversary of D–Day. On June 6, 1944, Americans from every corner of our country fought to protect our values and our families. Today, we are tarnishing the memory of D–Day by working to amend our Constitution to restrict individual freedoms.

I was wearing a uniform that day. I was overseas. I was not on the combat line, but I knew what I was doing was good for my country. Sixteen million of us served in the military in World War II.

I had visitors just last Thursday night at my office in New Jersey, about 10 people. One person lost their son. This woman was angry. I had spoken to her when his death was announced over a year ago. She was angry. He was a second lieutenant. His assignment that day was to diffuse bombs. She said: My son was trained to man a gun in the artillery. That is what his mission was. He was diffusing a bomb and he lost his life: The country that sent my son overseas is a country that helped my son die.

There was a woman with tears running down her face: Our son has been wounded once; they say he is ready to go back to combat. He has a Purple Heart. I don't want him to go back. Crying bitterly, in front of me.

There was a couple whose son is due for a second tour of duty. People in this unit were lost in the first tour. Why, now, they ask, is he going back to this war that does not do anything for America?

No, we do not want to discuss that in the Senate. That is too serious. That brings home the toll and the anguish that exists with our time in Iraq. We ought to be talking about what we do to get out of there safely and quickly. That is what we ought to do. But, no, we are talking about gay marriage. I can just see the people in arms across this country saying, The first thing I want you to do is make sure there is no gay marriage in this country. The devil with my kids education, the devil with my need for health care, the devil with our ability to be able to afford to live now in the country. Two people working so many jobs, just about keeping their heads above water.

Every Senator in this Senate values the institution of marriage. In my view, the way to honor marriage is to provide families with economic opportunity, good schooling for their children, a clean environment to live in, health care they can afford and funding for medical research that can help fight the diseases that plague children, such as juvenile diabetes, autism, or asthma. There are so many problems we could help prevent.

The amendment before the Senate today is not about protecting marriage. It is about directing people's lives, about making sure you behave in a particular way. Those of us who are talking against this do not necessarily support gay marriage. What we support is freedom, freedom to choose your lifestyle. That is what we are talking about. In State after State they are writing their own laws, what they think is appropriate for the people in their State—not to restrict them but to open their opportunity.

I hope my colleagues will reject this divisive amendment. Let's get on with far more pressing issues facing our Nation that can improve our national health, can improve our national will, can improve our national morale.

Those are the things I would like to do instead of looking and seeing what people really think about all of us in this place, all of us, from the White House, to the Senate, to the House. What do the American people think about the work we are doing? They do not think a heck of a lot of good is coming out of here. Frankly, we give them good cause because what we are paying attention to is what matters least to most Americans. What matters most in these Chambers, unfortunately, at this time is politics and elections. Too bad, America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, first let me praise the Senator from New Jersey and associate myself with his excellent remarks in opposition to this amendment both on marriage and with regard to the obvious point that we should be working on issues affecting the American people.

The Constitution of the United States is a historic guarantee of individual freedom. For over two centuries, it has served as a beacon of hope, an example to people around the world who yearn to be free and to live their lives without Government interference, with their most basic personal decisions.

I, like everyone else in the Senate, took an oath when I joined this body to support and defend the Constitution. I am saddened, therefore, to be once again debating an amendment to our Constitution that is so inconsistent with our Nation's history of expanding and protecting freedom.

There are serious issues facing this Congress. The fight against terrorism, the war in Iraq, health care, high gas prices, relief and recovery after Hurricane Katrina, the economy. These are the issues upon which the American people are demanding that Congress act. But instead, we are spending much of this week debating the poorly thought out, divisive, and politically motivated constitutional amendment that everyone knows has no chance of success in the Senate.

The proposed constitutional amendment before the Senate today, Senate Joint Resolution 1, has no better chance of getting a two-thirds majority

in the Senate than it did in 2004, which was another election year. There are no new court decisions that supporters of the amendment can legitimately argue make it any more imperative now than it was then that such an amendment be passed. Yet the Judiciary Committee was ordered to mark up this amendment to fit a schedule announced by the majority leader months ago.

This is pure politics, an election-year gambit. We should not play politics with the Constitution, nor should we play politics with the lives of gay and lesbian Americans who correctly see this constitutional amendment as an effort to make them permanent second-class citizens.

The amendment we are all debating will not pass, but it still risks stoking fear and divisiveness at a time when we should be trying to unite Americans. Gay and lesbian Americans are our friends, our family members, our neighbors, our colleagues. They should not be used as pawns in a cynical political exercise.

Backers of the amendment say they want to support marriage. But this debate is not really about supporting marriage. We all agree that good and strong marriages should be supported and celebrated. I happen to believe that two adults who love each other and want to make a lifelong commitment to each other, with all of the responsibilities that that entails, should be able to do so, regardless of their sex. I know others strongly disagree.

The debate we are having in the Senate, however, is not about whether States should permit same-sex marriage. The debate is about whether we should amend the Constitution of the United States to define marriage. The answer to that question has to be ''no.'' It is unnecessary and wrong for Congress to legislate for all States, for all time, on a matter that has been traditionally handled by the States and religious institutions since the founding of our Nation. For that reason alone, this amendment should be defeated.

There is no doubt that the proposed Federal marriage amendment would alter the basic principles of federalism that have served our Nation well for over 200 years. The Framers of our Constitution granted limited, enumerated powers to the Federal Government, while reserving the remaining powers of government, including family law, to State governments. Marriage has traditionally been regulated by the States. As Professor Dale Carpenter told the Constitution Subcommittee in its first hearing on this topic nearly three years ago, ''never before have we adopted a constitutional amendment to limit the States' ability to control their own family law.'' That is exactly what this proposed amendment would do. It would permanently restrict the ability of States to define and recognize marriage or any legally sanctioned unions as they see fit.

One of our distinguished former colleagues, Republican Senator Alan Simpson, opposes an amendment to the Constitution on marriage. In an op-ed in the Washington Post, he stated:

> In our system of government, laws affecting family life are under the jurisdiction of the states, not the federal government. This is as it should be. . . . [Our Founders] saw that contentious social issues would be best handled in the legislatures of the states, where debates could be held closest to home. That's why we should let the states decide how best to define and recognize any legally sanctioned unions—marriage or otherwise.

Columnist William Safire has also urged his conservative colleagues to refrain from amending the Constitution in this way. Commentator George Will takes the same position.

I recognize that the current debate on same-sex marriage was hastened by a decision of the highest court in Massachusetts issued in late 2003. That decision, in a case called Goodrich, said that the State must issue marriage licenses to same-sex couples. But the court did not say that other States must do so, nor could it. And it did not say that churches, synagogues, mosques, or other religious institutions must recognize same-sex unions, nor could it. Even Governor Romney of Massachusetts, who testified before the Judiciary Committee in 2004, admitted that the court's decision in no way requires religious institutions to recognize same-sex unions. No religious institution is required to recognize same-sex unions in Massachusetts or elsewhere. That was true before the Goodrich decision, and it remains true today.

Indeed, as time has passed since the Massachusetts court ruling, I think it has become clear that passing a constitutional amendment would be an extreme and unnecessary reaction. States are in the process of addressing the issue of how to define marriage. Voters in several States passed marriage initiatives in the last election. The legislature in Connecticut recently passed a civil union bill and the Governor signed it. In California, a bill passed by the legislature to permit same-sex marriages was vetoed but new protections for domestic partners were signed into law. The States are addressing the issue in different ways, which is how our Federal system generally works. I may agree with some State actions and disagree with others, but it would be a tragic mistake to cut this process off prematurely.

I was particularly struck by reports on what happened recently in the Massachusetts Legislature. The legislature narrowly passed a constitutional amendment in 2004 to prohibit same-sex marriage, but when the amendment returned in 2005, as the Massachusetts Constitution requires in order to put it on the ballot, the legislature rejected it by a vote of 157 to 39. Many supporters of the amendment apparently changed their minds.

So we should think long and hard about pre-empting State legislatures or State initiative processes through a Federal constitutional amendment that freezes in place a single, restrictive definition of marriage.

The supporters of the Federal marriage amendment would have Americans believe that the courts are poised to strike down marriage laws. They suggest that we will soon see courts in States other than Massachusetts requiring those States to recognize same-sex marriages, too. Of course, no such thing has happened in the 2 years since the Goodrich decision went into effect in May 2004. So this is a purely hypothetical issue—hardly a sound basis for amending our Nation's governing charter. And even if another State followed Massachusetts, either by legislative action or a judicial ruling, I believe it would be a grave mistake for Congress to step in.

As Professor Lea Brilmayer testified before the Constitution Subcommittee in 2004, and as remains true today, no court has required a State to recognize a same-sex marriage performed in another State. And as Professor Carpenter testified:

> the Full Faith and Credit Clause has never been understood to mean that every state must recognize every marriage performed in every other state. Each state may refuse to recognize a marriage performed in another state if that marriage would violate the public policy of that state.

In fact, Congress and many States have already taken steps to reaffirm this principle. In 1996, Congress passed the Defense of Marriage Act, a bill I did not support, but that is now the law. Section 2 of DOMA is effectively a reaffirmation of the full faith and credit clause as applied to marriage. It states that no State shall be forced to recognize a same-sex marriage authorized by another State.

In addition, 38 States have passed what have come to be called ''State DOMAs,'' declaring as a matter of public policy that they will not recognize same-sex marriages.

There has not yet been a successful constitutional challenge to the Federal or State DOMAs. In fact, three such challenges have already failed. Of course, it is possible that the situation could change. A case could be brought challenging the Federal DOMA or a State DOMA, and the Supreme Court could strike it down. But do we really want to amend the Constitution simply to prevent the Supreme Court from reaching a particular result in the future? What kind of precedent would such a preemptive strike against the governing document of this Nation set?

Former Representative Bob Barr, the author of the Federal DOMA, strongly opposes amending the Constitution on this issue. He believes that amending the Constitution with publicly contested social policies would ''cheapen the sacrosanct nature of that document.''

He also warned:

> We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place.

My colleagues, those are the words of the author of the Federal DOMA statute. That is what he said about the wisdom of trying to amend the Constitution in this manner. I have spoken with Mr. Barr about this. He and I disagree about many things. But we agree wholeheartedly that the Constitution is a very special document and that amending it to enact the social policy of the moment would be a grave mistake.

So far I have been discussing the general arguments against a Federal constitutional amendment defining marriage. I think they are compelling. But I also want to take some time today to discuss the specific text we are now considering: S.J. Res. 1, the so-called Marriage Protection Amendment. The amendment states:

Marriage in the United States shall consist only of the union of a man and a woman.

That is what we have come to refer to as sentence one. The amendment continues in sentence two:

Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

Before I discuss some of the ambiguities in this language, let me first remind my colleagues that this whole effort has often been portrayed by its proponents as a reaction to so-called ''liberal activist judges'' reinterpreting marriage. Time after time, we are told that judges have made law, in cases like the Supreme Court's decision in Lawrence v. Texas that State sodomy laws are unconstitutional, in the Massachusetts decision in Goodrich, and in the Vermont State court decision that forced the State legislature to adopt a civil unions law. This amendment is needed, we are told, to counteract and correct those missteps and to make sure they don't happen again. Keep that underlying concern in mind as we discuss the ambiguities of this language and who will ultimately decide how they are to be resolved.

A question that is important to many Senators, and to many Americans, as they consider this constitutional amendment is how it will apply to laws passed by State or local governments granting same-sex couples the right to enter into civil unions or domestic partnerships to become eligible for government recognition of their relationships and for certain benefits. One of the witnesses at the last hearing we held in the Subcommittee on the Constitution, Professor Michael Seidman, from Georgetown University Law Center, testified quite convincingly about the ambiguity of the language of this amendment on that question. And so chairman of the subcommittee asked if he had thought about how to draft the amendment to, as he put it, ''hit the mark.''

Professor Seidman responded:

Part of the problem is I think the people behind the amendment themselves are not in agreement on how to go. . . . So with respect, Senator, I think you guys have to get straight what you want before you tell me how to go about drafting it.

At the last subcommittee hearing on this topic, I asked the witnesses that subcommittee Chairman BROWNBACK had called some specific questions about this issue and then I asked them to respond to written questions about how they believe S.J. Res. 1 would apply to a challenge brought against specific State legislative actions. I have asked these questions of previous witnesses as well, and I have seen statements from many of the supporters of the amendment. I think Professor Seidman is absolutely right. It is simply not clear what the sponsors of this amendment intend.

Let's start with civil unions. Would this amendment outlaw civil unions? Specifically, would the recently passed Connecticut statute that establishes civil unions in that State be unconstitutional under this amendment? The Connecticut statute provides as follows:

Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.

Professor Richard Wilkins, from Brigham Young University, whom I understand was consulted in the drafting of the amendment, answered my written question as follows: ''The language quoted from Section 14 of the Connecticut statute would not be unconstitutional under the proposed amendment.'' But Professor Gerard Bradley, from Notre Dame, another drafter of the amendment, testified as follows at our hearing in April:

The amendment leaves it wide open for legislatures to extend some, many, most, perhaps all but one, I suppose, benefit of marriage to unmarried people, but I would say if it is a marriage in all but name, that is ruled out by the definition of marriage in the first sentence.

And Professor Christopher Wolfe, from Marquette University, another witness from the subcommittee's last hearing, agrees with Professor Bradley. He said the following in answer to my written question:

I think Connecticut's civil union scheme, which was enacted by the General Assembly without any judicial involvement, would be unconstitutional under the Marriage Protection Amendment, because it effectively authorizes marriage for unions of two men or two women, since the only difference between civil unions and marriage is the name.

Groups supporting the amendment like the Alliance for Marriage and Concerned Women for America seem to think the amendment will permit legislatures to enact civil union legislation. In a radio interview during the Senate's consideration of the amendment in 2004, Bob Knight, the head of that Concerned Women for America, suggested that wasn't such a good thing. He said:

The second sentence was so convoluted that many legal scholars disagreed about what it actually meant, and its backers assured everyone that it meant States could pass civil unions, which is not the way to protect marriage. Civil unions are gay marriage by another name.

As recently as November 2005, the Web site of the Alliance for Marriage had the following explanation of a chart in which it says that ''quasi-marital schemes'' such as civil unions would be permitted if adopted by a State legislature rather than imposed by court:

The second sentence ensures that the democratic process at the state level will continue to determine the allocation of the benefits associated with marriage.

Interestingly, this chart no longer appears on the Web site. I won't speculate about why that is, but it does seem like an important question for supporters of this amendment to get their stories straight on. There are States in the country today that authorize civil unions. How would this constitutional amendment affect those laws? We know what the supporters of the amendment intended with respect to the law in Massachusetts, but what about in Vermont, and Connecticut, and California, and New Jersey? What are duly elected State legislatures, in the exercise of their responsibility to enact laws consistent with the values and preferences of their citizens, allowed to do, and what are they prohibited from doing? Don't they deserve to know?

I could go on and on here, but let me mention Professor Scott Fitzgibbon of Boston College Law School, who also testified in support of the amendment at the subcommittee's last hearing. Mr. Fitzgibbon simply declined to answer when I asked him at the hearing whether the amendment would allow a State employer to give benefits to unmarried domestic partners of its employees. And he also refused to answer a followup written question about whether Connecticut's civil union law would be constitutional. But he did say the following at the hearing:

I am just going to say that the degree of ambiguity . . . isn't such a terrible thing. This isn't part of the tax code. It is proposedly [sic] a part of the United States Constitution and constitutional provisions rightly leave some scope for later determination.

So there you have it, Mr. President. The supporters and drafters of this amendment can't agree on how it would affect civil union laws like the one recently enacted by the democratically elected legislature of the State of Connecticut. And at least one of them says that ambiguity is not such a terrible thing. It is normal for constitutional provisions to leave ''some scope for later determination'' he says.

So who will decide this question, which everyone can anticipate will be raised if this amendment becomes part of the Constitution? Who is responsible in our legal system for making a ''later

determination,'' as Professor Fitzgibbon calls it, of the meaning of a constitutional amendment? You guessed it. It is the courts! Given how this whole exercise of trying to define marriage in the governing document of our country started—outrage over a State court's interpretation of a State constitution and fear of supposedly ''activist judges'' taking it upon themselves to redefine marriage—that is ironic indeed.

Now Professor Wolfe had an interesting suggestion when he answered my written questions concerning the California and New Jersey domestic partner statutes. Last summer, the California Legislature enacted a statute that grants all the same rights to domestic partners as it does to married spouses, except the right to file a joint tax return. All the rights and benefits but one. Under Professor Bradley's interpretation, that's probably okay. Professor Wilkins agrees that California's statute would survive a challenge. The chart that used to be on the Alliance for Marriage's Web site also agrees. I think a few of my colleagues made similar statements yesterday on the floor. But Professor Wolfe isn't so sure. He says in his written response to my question:

It could be argued that it is unconstitutional under the Marriage Protection Amendment for the same reason that the Connecticut civil union law is unconstitutional, since—even though one provision provides one exception—the general principle of the law (in Sec. 4) defines the domestic partnership as being equivalent to marriage. The single exception could easily be viewed as merely an evasive maneuver to avoid a pure equivalence that would make the statute constitutionally vulnerable.

It could also be argued, however, that there is a difference between this domestic partnership law and marriage (beyond just the name), and therefore domestic partnership is not marriage in everything but name, and therefore it is within the constitutional power of the California legislature to pass. . . . In a close case like this, I think the legislative history would be likely to play a determinative role in the final decision.

He goes on in an answer concerning the New Jersey domestic partnership statute to make his suggestion:

Of course, it would be desirable to clarify this question, if possible. For example, offering an unambiguous statement of the meaning of the amendment in the legislative history (e.g., the committee report on the amendment, and representations—uncontradicted by other supporters of the amendment—of the amendment's sponsors in floor debate) would be likely to have a substantial impact on how the amendment would be understood by those who have to vote on it, in Congress and in State legislatures.

Well there's a novel idea. Let's have an ''unambiguous statement'' of the meaning of the amendment, uncontradicted by other supporters of the amendment. But Professor Wolfe, a supporter of the amendment, doesn't know what it is. He answered my questions as if they were a law school exam hypothetical. This amendment has been around for nearly 3 years and we still don't have that unambiguous statement. Will we get one in this debate on the floor? I don't know. I do know that some of the most ardent supporters of the amendment in the Senate are strongly opposed to civil unions as well. But will the amendment they wrote to supposedly protect marriage outlaw civil unions and domestic partnerships? It is not clear to me yet, and when we are talking about amending the Constitution of the United States, I think it should be.

The Senate and State legislatures—not to mention the American people—deserve clear and reliable answers to these questions before they are asked to decide whether to amend the Constitution. So I would hope that every Senator who is planning to vote ''yes'' on this amendment today will tell us before we conclude this debate what he or she thinks the amendment means and how it would apply to State statutes already on the books, as well as others that might be passed. Maybe we will get that unambiguous statement we have waited so long for. Then again, maybe we won't.

Even though Professor Wolfe answered my question as if it were a law school exam—saying ''it could be argued on the one hand. . . . But on the other hand''—this is not just an academic exercise. It will have an impact on the lives of millions of Americans.

Mr. President, as you can tell, I am very concerned about the Senate considering this amendment on the floor without any certainty about what it means or how it will be applied. Fortunately, it seems clear that supporters of this amendment don't have the votes to pass it in the Senate. So the lack of clarity has no real world repercussions for now. But it is extremely disappointing that we may vote in the United States Senate on an amendment to the Constitution of the United States with such basic questions unresolved.

The Judiciary Committee should have fully explored these questions. Instead, because of the rigid schedule to bring this matter to the floor, the committee considered the amendment hastily and out of the public eye, without cameras, without microphones, with only a handful of press and no members of the public present. That is no way to treat any important legislative matter, let alone an amendment to the basic governing charter of our country, the Constitution. As a result, the amendment did not receive the kind of searching inquiry and debate that a constitutional amendment should receive. Our hearings in the Subcommittee on the Constitution exposed serious questions about the meaning and effect of the amendment, including the conflicting answers to written questions that I have discussed. Further work in the committee might have shed light on those questions for our colleagues in the Senate who are now faced with having to vote on the amendment. But it seems that politics often trumps reason in this body during an election year. And when the majority leader has promised interest groups supporting this amendment that there will be a floor consideration on a particular day, there is apparently nothing that can stand in the way of that promise being kept. Not even respect for the Constitution of the United States.

We should not write discrimination and prejudice into the Constitution. And we should not prematurely cut off the important debates taking place in States across the country about how to define marriage by putting in place a permanent, restrictive Federal definition of marriage.

As we sit here today, there are Americans across our country out of work, struggling to pay the month's bills, worrying about their lack of health insurance or their ability to put their kids through college. Instead of spending our limited time this session on a proposal that is destined to fail and will only divide Americans from one another, we should be addressing the issues that will make our Nation more secure, our communities stronger, and the future of our families brighter.

I urge my colleagues to oppose this unnecessary, mean-spirited, divisive and poorly thought out constitutional amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I want to take a moment to respond. First of all, the States are trying to handle the issue of marriage. The problem is that the courts are changing those actions. Even worse than that, we have citizens who initiated issues on marriage within the States, and now we have the courts overturning that when those issues have passed by 70 percent or more.

I felt that needed to be clarified.

I think the amendment is very clear, particularly the second sentence, when you know that refers to the courts and we are limiting the powers of the courts. We have not done anything to restrict the power of the legislature, except on the definition of marriage which is between a man and a woman.

This is an important issue, and I think we need to assure that the States will have a key role as far as handling issues related to marriage. That is what this amendment is all about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I stand in strong support of this proposed amendment to the U.S. Constitution to uphold and affirm traditional marriage.

Several years ago, when folks who were focused on the health of marriage and the upbringing of children from around the country gathered to begin to attack this problem, they came to the Congress with the idea of proposing a constitutional amendment. They

went to certain Members of both the House and Senate, Republicans and Democrats. I was in the House at the time, and I was honored that I was one of the four House Republicans—there were eight House Members in all, four Republicans and four Democrats—whom these leaders approached to be original coauthors of this constitutional amendment. I immediately agreed and have been very involved in the debate and the fight ever since then.

I am very happy to bring this work to the Senate with so many other leaders such as Senator ALLARD, who has been leading the effort for some time. This is a very important effort because—it is often said, but it is very true and it is worth repeating—marriage is truly the most fundamental institution in human history. Think about that statement and the significance of it: It is the single most fundamental social institution in human history.

Certainly, we should not rush, as we are at the present time through activist courts, to radically redefine it after thousands and thousands of years of living under the traditional definition.

Mr. President, often in the Senate we get very wrapped up in our debate and our laws and proposals and Government programs. We think so much is changed by that and so much hinges on that. Yet what is so much more important and more fundamental are those enduring—hopefully enduring—social institutions such as marriage, community, church, and faith communities. We need to realize how central those sorts of institutions are and how important they are in terms of influencing behavior in our society—good and bad behavior. When we look at so many of the social ills we try to address in Congress with Government programs and proposals, serious social problems such as drug abuse, teenage pregnancy, and the like, perhaps the single biggest predictor of good results versus bad results is whether kids come from a stable, loving, nurturing, two-parent family, a mother and a father. That doesn't mean you cannot have success raising a child in other environments, such as in a struggling one-parent household. It means that the odds are so much more stacked against you when you move to that other sort of environment.

So I think it is very appropriate and well overdue that we in the Senate focus on nurturing, upholding, preserving, and protecting such a fundamental social institution as traditional marriage. A lot of folks in Washington don't fully understand that. But I can tell you that real people in the real world, certainly including in Louisiana, get it. That is why 2 years ago, in 2004, we passed a State constitutional marriage amendment in Louisiana to uphold traditional marriage. We passed it with 78 percent of the vote. Folks in Louisiana want those values upheld. They don't want them redefined radically by activist courts, particularly people in courts in other States such as Massachusetts. And make no mistake, that is what is happening. That trend would have an impact not just in isolated States such as Massachusetts but throughout the country as marriage is redefined by liberal activist judges and others. So the people in Louisiana and a solid majority of people around the country want us to address this issue nationally through a constitutional amendment once and for all. That is why I strongly support this effort.

I thank the Senator from Colorado and others again for leading this fight in the Senate. I was proud to help lead it in the House when I was there. I am proud to join other allies on the floor of the Senate. Again, rather than focus on all these new Government programs, new little ideas that we run to the floor of the Senate with every day, let's take time to remember and focus on truly significant, enduring social institutions, which are the greatest predictors and factors in terms of encouraging good behavior and success, discouraging bad behavior and failure. This is the way we can have the most impact on those problems we debate endlessly, such as drug abuse, teenage pregnancy, and the like. I urge all of my colleagues to join us in this effort.

I predict that, while we may not reach the two-thirds vote we ultimately need with this vote this week, we will make important progress, we will pick up votes since the last time the Congress voted on this issue in 2004. I am one small example of that progress because my election in 2004 meant that this vote went from a ''no'' vote of my predecessor, John Breaux, to a proud ''yes'' vote of the junior Senator from Louisiana now. I look forward to casting that vote. I urge my colleagues to rally around enduring, positive social institutions that are so essential for the health of families, kids being brought up and, indeed, our society.

With that, I yield back my time.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, when I first ran for office to represent my folks out in Utah, I announced my candidacy because of my deep love for my country and my State. My appreciation for both has only deepened over the years. Perhaps the most remarkable characteristic of this country—one that, in my opinion, is distinctly American—is our tolerance, our willingness to accommodate the very beliefs of our fellow citizens. After all, our country's motto is E Pluribus Unum—out of many, one.

But we accept these differences because we share so much else. We sometimes forget it around here, but we agree more than we disagree, or at least that is what I hope for. We all believe in the dignity of the human person. We all believe that men and women were endowed by their Creator with certain inalienable rights, and the Government exists to secure those rights. For us, and for our constituents, this is common sense. The same is not true in many other countries, where these basic ideas are debated by all and rejected by some.

We should remember this heritage of respect when we debate the marriage protection amendment. There are strong feelings on both sides of this issue.

I support this amendment. Marriage and family life are the bedrock of American society—the schoolhouse of American citizenship—and judges should not be altering this fundamental institution.

I understand that some of my colleagues believe we should be debating something that they see as of greater consequence. But for many in this body, and for millions of people throughout the country, including in Utah, no issue is more important. During this debate, we should treat each other fairly, with respect, and with an openness to the good-faith arguments on both sides of this amendment.

There is precedent for this. A few weeks ago, the Senate passed an immigration bill. I voted against it, but I agreed with the sentiments of my colleagues who concluded, after the die was cast, that the Senate had behaved admirably. Tensions ran high, but we had a respectful and serious debate about the issues. We voted amendments up and down. I am not saying I saw any Websters, Clays, or Calhouns on the floor, but our respect for one another's opinions and well-intentioned debate certainly did them proud. This is not to say that I was happy with the final product. Even as a purported compromise, it left so much to be desired that I was compelled to vote against it. Yet, I was encouraged by the process and the respect that we showed for the deeply held opinions of fellow Senators.

Unfortunately, the debate over the marriage amendment seems to be unfolding quite differently. You would not know it from the arguments of the opponents, and you would not know it from the lack of treatment it has received in some news outlets; but this is an important issue to Americans. This might not be a major issue for those who live inside the beltway, but for my neighbors in Salt Lake City, my constituents throughout Utah, and good, decent Americans across the country, this is a critical issue.

This debate is not some sideshow for a small sliver of activist groups. Majorities of Americans across the Nation support the protection of traditional marriage laws. This support is not limited to red or blue American. States in every region of the country have worked in recent years to reaffirm the traditional definition of marriage. Forty-five States have either a State constitutional amendment or a statute that preserves traditional marriage laws. Nineteen States have codified the

definition of marriage in their State constitutions. In 2004, 13 States, including Utah, overwhelmingly passed their own constitutional amendments to preserve traditional marriage. I was proud to join the majority of my fellow citizens in supporting the adoption of Utah's measure to protect traditional marriage. Seven more States will vote on their amendments this year.

Yet, for those opposed to this amendment, these constituent concerns are not worth our time. I disagree. Yesterday the distinguished Democratic leader came to the floor—a dear friend of mine—with a laundry list of issues that we could be addressing instead of this amendment. Along with the Democratic whip, he did so again today. Ultimately, I think we are capable of chewing gum and walking at the same time. In 2 days, we will be taking up floor time to debate a bill to create a race-based government for the State of Hawaii. I will not hold my breath waiting for these same folks to argue then that we should be discussing more pressing issues.

I wish those dismissing the importance of this issue would let us look at their phone logs. I know that in my office our phones have been ringing off the hook. Utah is a pretty conservative State, but I don't doubt that other members from across the country are hearing the same thing. The constituents who support this amendment, and others like it in the States, understand something that the sophisticated proponents of same-sex marriage do not—our marriage laws permeate our entire culture and we need to be wary about letting the judiciary foist some untested and, frankly, unwanted social experiment on an entire Nation.

Unless we allow an the American people to decide this issue themselves through the amendment process, it is only a matter of time before some renegade judges take it upon themselves to decide it for the American people.

Yet, some in this body apparently prefer to put their heads in the sand.

They know that this is an important issue. But they are tied in knots. A few weeks ago, Howard Dean, the Chairman of Democratic National Committee was for traditional marriage before he was against it. One day the Democratic Party was for traditional marriage. The next day, efforts to protect traditional marriage were tantamount to discrimination.

The bottom line is that some liberal interest groups are attempting a redefinition of marriage, and they are out there all alone on this issue. Vast majorities of Americans support traditional marriage. But some of my colleagues on the other side of the aisle are so dependent on these activist groups for support that they sometimes feel they cannot go against them. I think this is why we are having a cloture vote, rather than an up- or-down vote on this amendment. At the end of the day, many of the same people who deny the necessity of this amendment do not want to have a vote it on their record.

So, rather than take on the other side's arguments, they avoid the issues and challenge the motives of those who support this amendment. My friends on the other side of the aisle claim that this amendment is discriminatory. My colleague from Massachusetts, Senator KENNEDY, is a good man. But he is out of line to say as he has that a vote for this amendment is a vote for bigotry pure and simple. Over half of his colleagues will vote for cloture on this amendment. Does he really want to suggest that over half of the United States Senate is a crew of bigots?

This is Dr. Dean's subtle diagnosis. Democrats are committed to fighting this hateful, divisive amendment and to fighting similarly discriminatory ballot initiatives in states across the country. We strongly oppose any attempt to write discrimination into law—whether it be at the local or state levels or in the United States Constitution.

Never—not once in any State—have the people's popularly elected representatives decided to amend traditional marriage laws to include same-sex couples. When given the chance, they affirm traditional marriage. In Vermont, in California, and in Washington there is statutory language preserving the traditional definition. Are the legislators and citizens who supported these laws engaged in discrimination?

Let me give you another example.

When Nevada considered a State constitutional amendment to preserve traditional marriage, a vast majority of the State's citizens supported the measure. For Nevadans, preserving traditional marriage was not a wedge issue. Divisive issues do not gamer 70 percent of the vote, as it did in 2000.

And so it was no surprise that the State's foremost public servant wholeheartedly supported this effort. Nevadans wanted to amend the State's constitution merely to affirm what has always been the law in Nevada and in the other States—that marriage is between one man and one woman.

That was then.

This is now.

Today, the Democratic Leader, who I count as a friend, has jumped on this bandwagon and said that this amendment would write discrimination into the Constitution.

So he supports unequivocally a State constitutional amendment to protect traditional marriage, but he claims that it is discrimination at the national level.

Let me get this straight.

Since the colonies were first settled, traditional marriage has been the norm in this country. It remains so today with the exception of Massachusetts. In recent years the American people have reasserted in State after State their strong desire to maintain traditional marriage laws. So the beliefs of most Americans are discriminatory?

Was it discrimination when members supported their State constitutional amendments to protect traditional marriage?

Was it discrimination when 85 members of this body, including 32 Democrats, voted for DOMA, the Defense of Marriage Act?

Was it discrimination when President Bill Clinton signed it?

Is it discrimination for our religious leaders to support traditional marriage?

The Catholic Church opposes same-sex marriage. Does the Pope believe in discrimination?

Seventeen Catholic Bishops and all eight American Cardinals support this amendment. Do they support discrimination? That is what some of my colleagues are suggesting.

Is every parish priest who refuses to marry a same-sex couple engaged in discrimination?

My church supports traditional marriage. So do many other religions that recognize the importance of marriage between a man and a woman.

I do not think that some of my colleagues opposing this amendment have considered the full ramifications of a Federal court decision commanding same-sex marriage on the States. What happens to the tax status of a church that our courts have determined to be engaged in discriminatory conduct that cuts against the public policy of the State? We have seen a preview with the experience of Catholic Charities in Massachusetts. For decades, this noble organization has provided adoption services for hard-to-place children. Yet the State recently presented this organization with the catch–22 of abandoning the church's traditional teaching on human sexuality or abandoning their religious commitment to works of mercy. This is not a choice our churches and religious citizens should face, but it is, I fear, a choice that they will have to make unless we act.

Our history as a nation is dotted with instances of some outlier, activist judges who ignored their institutional limitations in order to replace their own public policy judgments for those of the American people and their representatives. It is hardly a surprise that some elite judges might underestimate the political and social consequences of their efforts to alter the legal framework of marriage. After all, most of the people that they know may be in favor of such changes.

Well, they are about to find out that there are people outside of their small universe of liberal opinion. If a few renegade judges determine that traditional marriage is unconstitutional, our previous political debates over improper judicial decisions will pale by comparison.

The fact remains that some judges are eager to replace the opinions of the American people with their own. Since the cloture vote on the marriage amendment in the 108th Congress, State trial courts in Washington, New

York, California, and Maryland have struck down traditional marriage laws. The marriage laws of Connecticut have been challenged. The laws in Iowa have been challenged. A lawsuit has been filed in Federal court in Oklahoma that challenges not only a State constitutional amendment to preserve traditional marriage, but also the Federal Defense of Marriage Act. The Supreme Court of New Jersey seems poised to overturn the State's traditional marriage laws. A Federal court in Nebraska already struck down the State's constitutional amendment to protect traditional marriage. Just a few weeks ago, a judge in Georgia invalidated an amendment passed by the State's voters in 2004.

Those who oppose traditional marriage are not playing by the rules. They are not convincing their fellow citizens of the merits of their cause. They are not taking their arguments to the legislatures. Rather, they are taking the easy way out. Just convince a few elite judges that they are on the side of justice, and traditional marriage laws will go the way of the dinosaurs.

According to this amendment's opponents, when well-funded liberal activist groups ask judges to subvert the will of the people in every State, they are not playing politics. When they ask a bare majority of judges to overturn traditional marriage laws and declare them discriminatory, they are merely seeking justice. Yet when the people's elected representatives attempt to preserve traditional marriage in this country, we are playing politics.

We must be respectful of homosexual citizens. They are our fellow citizens. And they, no less than we, are endowed with the rights that Thomas Jefferson elaborated in the Declaration of Independence. But we also live in a democracy. And in democracies the people get to determine social policy, not judges. We should take this opportunity to restore the authority of the people over public policy and their own constitutions. We should remind these judges that the judiciary does not have a method of reasoning superior to the people or their elected representatives. Judges are good at deciding cases. They are good at applying law. But when it comes to moral reasoning, there is nothing in their legal training or in our laws that gives a few activist judges a right to make wholesale social change at the expense of the traditions of the American people.

I support this amendment. It is merely a congressional affirmation of what the vast majority of citizens in Utah and across the country already believe—marriage should be between one man and one woman.

We have a long way to go, but as even this amendment's opponents know, the fact that legislation will not pass is no reason to avoid a debate. Only by debating can you build a consensus. The American people have already arrived at a consensus on this issue. They want to see traditional marriage remain the law of the land. I agree with that sentiment, and so I will be voting for cloture. I urge my colleagues to do the same.

I yield the floor.

Mr. ALLARD. Mr. President, I thank the Senator from Utah for his hard work on this issue. He is a dedicated Senator and an honorable one. We appreciate him taking the time to address the Senate.

Mr. President, I now ask that Senator THUNE be recognized.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise today to join the debate and express my strong support for the marriage protection amendment, of which I am a cosponsor. Amending the Constitution of the United States, as many have noted, is serious business and is something we should only undertake when we have a compelling rationale.

This amendment meets that high standard. Nothing is more fundamental, nothing is more important to the fabric of American society than the family. And that is what this debate is really all about.

Every Member of this body, every citizen of this Nation understands, or at least should understand, that the traditional family is the glue that binds our communities, the building block on which our Nation is constructed. It is something that I as a father of two daughters and a husband of 20 years understand and appreciate.

Yet today, this pillar of our society is under attack by some who are pursuing a narrow social agenda designed to destroy the definition of marriage that has existed since the birth of civilization. They are trying to convince us that what virtually all Americans have understood for more than two centuries as self evident, is wrong.

People ask why do we need to do this now? Why is it necessary? As has been noted, despite widespread public disapproval, activist judges are eroding the different State laws that define marriage as a sacred union between a man and a woman.

Currently nine States face lawsuits challenging their marriage laws. California, Maryland, New York, and Washington State trial courts have followed Massachusetts and found State marriage laws unconstitutional. The State supreme courts in New Jersey, Washington State, and New York could decide marriage cases this year.

The only sure way to prevent the courts from redefining marriage is to send to the States a Federal constitutional amendment that affirms marriage and prevents activist judges from hijacking that definition.

There have been those who have come to the floor and said that this really is not an issue the American people care about. Well, I beg to differ, if you look at what has happened in 19 States. Nineteen different States in this country have adopted constitutional amendments, by public vote, defining marriage as a union between a man and a woman.

That very initiative, that very vote will be on the ballot this fall in South Dakota. I predict that we will get a very comfortable margin in favor of that.

In fact, if you look at the average in all of these places around the country, all of the States that have debated this issue and voted on it, the average vote has been 70 percent. Seventy percent of the American people have a different way of deciding what they care about and what is important and that is sometimes different than politicians here in Washington.

Some have said there are more important issues we need to deal with. However, the fact of the matter is if you look at the agenda we have been talking about for the past several weeks right here in the U.S. Senate we have been dealing with those issues.

Yesterday several Democrat Senators expressed their frustration about this debate taking place, a sentiment that has been repeated throughout the course of the day by more of their Democratic colleagues. They say there are more important issues that need to be debated during this time instead of marriage. Putting aside the fact that protecting traditional marriage and families is an important topic, they seem to forget what has been occurring on the Senate floor.

They say we need to focus on health care, an issue that is very important to me and my constituents in South Dakota. However, they forget that when this issue was brought to the floor just a few short weeks ago, they filibustered not one, not two, but three solutions to the health care crisis that faces our country; namely two types of medical liability reform and the Health Insurance Marketplace Modernization and Affordability Act.

They say we need to tackle the high price of gasoline that has affected this entire country, something that again affects profoundly the people I represent in South Dakota. However, they must forget the battle that has been occurring since the early 1990s to open up the Alaska National Wildlife Refuge, or ANWR, to oil exploration. It is something that has been debated consistently and repeatedly here and blocked from consideration. Once developed, ANWR could provide about one million barrels of oil each day for the next 30 years, a good first step toward solving this complicated problem. However, what we have run into is continued filibusters on what is a very commonsense step toward reducing our energy dependence.

They are right, there are many important issues facing Americans throughout this country. However, they are pointing their fingers at the wrong people. If they are so serious about solving America's problems, they should let the Senate vote on these issues, including the Marriage Protection Amendment.

One of the other issues which has been raised throughout the course of this debate is that we should not trivialize the Constitution with this amendment, that somehow marriage does not meet the threshold or the criteria of the liberal elites to warrant discussion as an amendment to the Constitution.

Well, there again, if you look at just the last 20 years here in the U.S. Senate, there have been a whole range of constitutional amendments that have been proposed by our colleagues on the other side. In fact, there are over 100 constitutional amendments that have been proposed right here in the U.S. Senate by our colleagues on the other side.

I was listening earlier to the debate on the floor when the Senator from Illinois, the Democrat whip, and the Senator from Nevada, the Democrat leader, were talking again about how we ought to be talking about other issues. It is interesting to note if you look at some of the constitutional amendments that have been introduced here in the U.S. Senate, both of those particular Members, as well as others of our colleagues on the Democrat side, have cosponsored many of those amendments.

They have cosponsored amendments dealing with physical desecration of the flag, of which I am also a cosponsor, as well as an amendment dealing with the regulation of contributions and expenditures intended to affect elections. There was an amendment proposed by the Senator from Illinois that would abolish the electoral college and provide for the direct popular election of the President and Vice President of the United States. There was a constitutional amendment offered by the Senator from Nevada that proposes repealing the 22nd amendment which establishes Presidential term limitations.

There are always constitutional amendments offered here in the U.S. Senate, and there are always those on both sides of the aisle who have varying levels of interest in those. But the reality is, that is what our Founders gave us. This is the mechanism they gave us whereby we can deal with some of these issues when there are constitutional questions.

What has prompted this debate in the U.S. Senate is the fact that States across this country, and in the Federal Government right here in Washington with the Defense of Marriage Act in 1996, have all taken action on the issue of marriage. Yet, we have courts across the country that are challenging the will of the people in each of those respective decisions and going their own way. They are trying to redefine marriage in a way that is contrary to what I believe is the tradition of this country, not only the tradition of this country, but since the beginning of time.

This is an important issue. It is an important debate. It is a debate that I believe we need to have in this country.

The other thing that has been said by our colleagues on the other side is, Why debate something if you know it is not going to have the votes for passage? Well, we may not get to 67 votes this time around and I was not here in 2004 when the Senator from Colorado brought this amendment to the floor and it was voted on previously, but I am told it got somewhere around 48 votes. I think we will get more votes for it this time.

But the point is, why would we not debate meaningful issues here in the U.S. Senate? That is what we are here for. If we just brought legislation to the floor of the U.S. Senate that we knew we had the votes to pass, we would not be debating very much.

We had a lot of amendments to the immigration bill that we debated in the last couple of weeks that failed by large margins. Yet, I did not see anybody here saying we should not debate them because we know we do not have the votes here to pass it.

The Senator from Illinois was talking about this earlier today saying: We should not be debating this because we know it is not going to pass. The last amendment he offered to the immigration bill, that was debated in the last couple of weeks in the U.S. Senate, got just 34 votes. Well, I think he has a right to debate that in the U.S. Senate, just like I think the people across this country who care passionately about the defense of marriage have the right to do so as well.

The other thing that gets stated a lot in this debate is that we should not in any way erode States rights, that somehow this amendment steps on States rights. That is wrong. Think about it. This is what our Founders gave us. This is the mechanism whereby the people of this country can amend the Constitution.

It requires the active participation of people all across the country, through their elected Representatives here in the U.S. Senate where it takes a two-thirds vote and the House of Representatives where it takes a two-thirds vote. And then it goes to the States. Three-fourths of the States, 38 States, would have to ratify this in order for it to become a part of our Constitution. That is about as much public participation as you could possibly ask for.

Not to mention the fact, as I indicated earlier, that we have already had votes all across the country. Nineteen States have put it on the ballot. Nineteen States, by an average of 70 percent, have affirmed traditional marriage as the union between a man and a woman.

It seems to me the States ultimately are going to decide this issue. If in fact this body and the U.S. House get the two-thirds votes that are necessary to send it to the States, 50 State legislatures are going to be debating this. Thirty-eight of them are going to have to decide if it is the right thing to do before it ultimately becomes part of the Constitution of the United States.

Very simply, the reason for this debate is that people in this country want to know that we care enough about the institution of marriage to step up and defend it against attacks from liberal activist judges, against courts that have decided that they want to redefine what we have known to be true about marriage for the past several hundred years. That is where this debate ought to be heard.

It ought to be heard by the people of the United States of America. It has been in legislatures around the country. It is being heard here in the U.S. Senate today. The people's voice is what we do. We give voice to the issues that the people in this country care about, and I happen to believe that this is one of those issues.

That is fundamentally what this debate is about. It is not about whether or not there are enough votes to pass it. It is not about whether or not this warrants the threshold of what is worthy for a debate on a constitutional amendment.

As I said earlier, our colleagues on the other side who are objecting to that have offered over 100 constitutional amendments over the past 20 years in this institution. It seems to me that the definition of marriage, that fundamental foundational building block of American society, is certainly worthy and warrants discussion and the time of the U.S. Senate.

So I commend the Senator from Colorado for bringing this to the floor. I look forward to voting in favor of it. I urge my colleagues to do the same, because I believe that is what the American people would have us do.

I yield the remainder of my time.

Mr. MCCAIN. Mr. President, I understand I am recognized for 15 minutes.

The PRESIDING OFFICER. The majority controls the time until 4 o'clock.

Mr. MCCAIN. Mr. President, I believe that the institution of marriage can serve its public purposes only when it is understood as being a union between one man and one woman. It is this understanding that offers public reinforcement to the vital and unique roles played by mothers and fathers in the raising of their children. It is this understanding that offers a foundation for principled objections to those who would pursue the imprudent agenda of dismantling an institution that has served us well, and replacing it with newer and more flexible understandings that are of questionable public value.

I also believe in the institution of republican government as described in the U.S. Constitution. This, too, is an institution that has served us well, founded upon the precept that the American people speak through their elected representatives, and these representatives remain at all times answerable and accountable to the people whom they serve. Today, on the question of marriage, we are told by advocates on both sides of the debate that

these two institutions, as they are currently understood, cannot be reconciled, and that one or the other must be changed. I do not agree, and thus I do not at this time support the proposed Marriage Protection Amendment.

The proposed amendment would establish in our Constitution a permanent resolution of a debate that is currently and properly being resolved in different ways, in 50 different States, by the people's elected representatives. Our system of federalism is not easily separable from our commitment to republican government, because it is driven by the idea that we are best governed when those who represent us live where we live, and share the values that we share. It is this understanding that has allowed us the strength, as a Nation, to time and again preserve our unity and confront our challenges in times of crisis, no matter how great our differences on issues that are the subject of heated public debate. The continued vitality of America's commitment to federalism and republican government offers a hopeful example to strife-torn areas of our world where conflicts are tragically settled with bullets rather than ballots. The constitutional value of federalism is doubly important in the area of family law, because power to legislate in this area has traditionally been reserved to the states, and because issues of family structure affect the fabric of the broader community, creating the opportunity for approaches that reflect the values of the States that form our Nation.

Most Americans believe, as do I, that the institution of marriage should be reserved for the union of a man and a woman. Wherever the question of same-sex marriage has been put to the test of public approval, it has been decisively rejected. Presently, 19 States protect in their constitutions traditional definitions of marriage. In 2004, amendments to State constitutions preserving the institution of marriage exclusively as the union of a man and woman were placed on the ballot in 13 States. All 13 passed by substantial margins. Thus far, seven States have a constitutional amendment on the ballot this year. There is little doubt they will all prevail. Proponents of an amendment to my State's constitution, which I support, are working hard to collect the required number of signatures to secure a place on the November ballot. If we succeed, I am certain Arizonans will adopt it overwhelmingly.

There can be little doubt that a sizeable majority of the American people, whatever their views on other questions involving the rights of homosexuals in our society, strongly support reserving the institution of marriage for the union of one man and one woman. That majority includes, I am confident, majorities in every State in the Union. It includes Americans of both political parties, whose voting habits and general political philosophy range from conservative to moderate to liberal.

It is obvious that there is a broad consensus in this country in support of the traditional definition of marriage. And when the American people are so decided in a public debate, their elected representatives will defend that consensus. Forty-five States have either constitutional protections or statutes on the books defining marriage in traditional terms. In 1996, Congress passed and President Clinton signed into law the Defense of Marriage Act, which allows each State to deny within its boundaries the status of marriage to the union of a same-sex couple that may have been recognized in another State. To date, the Defense of Marriage Act has not been successfully challenged in Federal court.

The broad consensus in support of traditional marriage does not yet extend to support for the measure we are debating today, an amendment to the Federal Constitution defining marriage as the union between a man and a woman. I suspect that is because most Americans are not yet convinced that their elected representatives or the judiciary are likely to expand decisively the definition of marriage to include same-sex couples.

Obviously, the Massachusetts Supreme Court's ruling in 2003 effectively extended lawful marriage to same-sex couples even though it is apparent that a majority of Massachusetts residents do not support that change in the interpretation of the State's marriage laws. But there are political remedies to what, I believe, can be fairly criticized as judicial activism that ignored the will of the people and denied a State government its long established right to regulate marriage. In Massachusetts, more than 120,000 voters signed a petition to place on the ballot an amendment to the Commonwealth's constitution restoring the traditional definition of marriage. A constitutional convention to consider amending the Massachusetts constitution is scheduled to convene on July 12.

The Nebraska decision is under review by the U.S. Court of Appeals for the Eighth Circuit, which has already heard oral arguments in the case, and might issue a ruling as early as this summer. Most analysts, on both sides of the debate, believe the lower court's decision will be reversed, and the exclusive protections for traditional marriage that the people of Nebraska adopted in 2000 by a vote of 70 percent will be restored to their constitution. Nebraska's attorney General has not even felt it necessary to ask for a stay of the district court's decision pending the outcome of the appeal, which would almost certainly have been granted. I assume this is because Nebraska still has a defense of marriage law on the books, and there are no same-sex marriage cases pending in Nebraska courts or same-sex marriage legislation pending in the Nebraska Legislature.

I understand that the precipitous Massachusetts decision as well as the unlawful granting of marriage licenses to same-sex couples in a few localities outside Massachusetts, challenges to traditional marriage laws in other States, and the decision last year by the Federal district court in Nebraska that struck down an amendment to Nebraska's constitution restricting marriage to a man and a woman have added to the support for a Federal marriage amendment. While that support does not mirror the broad national consensus in support of traditional marriage, it is substantial and passionate. I understand that and I respect it, and I agree that marriage a uniquely important institution should be protected. But I do not agree that all the above circumstances have made it necessary to usurp from the States, by means of an amendment to Federal Constitution, their traditional role in regulating marriage. I'm reluctant to abandon the federalism that is part of the essence of conservative political thought in our country. And I am very wary of the unintended consequences that might follow from making an exception to our federalist principles for the sake of addressing a threat to the institution of marriage that may still, indeed, seems likely to be, defeated by means far less precedent setting than amending our Nation's Constitution.

Of course, while I disagree that the current constitutional structure provides insufficient mechanisms for ensuring that the public meaning of marriage is not tampered with by activist judges, it would be disingenuous to argue that those who support the proposed amendment have no grounds for their concern. In recent decades there have been too many occasions on which the Federal Courts, including the Supreme Court, have forgotten their proper role, and abandoned the virtues of federalism and republican government in favor of imposing their own policy preferences in the guise constitutional interpretation. Decisions such as Roe v. Wade continue to distort the democratic process in ways large and small to this very day. It is a telling commentary on those who seek to change the longstanding public meaning of marriage that in many instances they have chosen to pursue their agenda through the courts rather than taking their case to the people. Those who wish to engage the issue in good faith should reject out-of-hand attempts to read into the Constitution a right to same-sex marriage, because the Constitution says absolutely nothing about it, and because the longstanding traditions of American society have defined legal marriage as a union between one man and one woman. Indeed, yet another reason I am reluctant to support the proposed amendment at this point in time is that I do not accept the proposition that the current Constitution could ever reasonably be read to contain a supposed ''right'' that it plainly does not contain.

It is just not clear to me that threats to the institution of marriage that have arisen in recent times have become a permanent breach of State authorities' traditional role in regulating and defining marriage as the people of their States and their elected representatives see fit. My confidence that the public meaning of marriage will be decided in the context of federalism and republican government rather than by judicial fiat is strengthened by the recent confirmations of Chief Justice Roberts and Justice Alito, and I hope that future appointments to that State and Federal courts give us judges who share a similar understanding of the courts' proper role in our constitutional system.

However, if I am wrong, and the Nebraska decision were to be upheld on appeal; or were other challenges to State marriage laws made and upheld; or if majority sentiment and legislative remedies in affected States fail to overcome peremptory judicial intrusions into the political process of defining marriage; or if the Supreme Court were to reject the Defense of Marriage Act, then, and only then, would the problem justify Congress making the momentous decision to amend the most enduring and successful political compact in human history as the only recourse means to restore the public's right to define, according to the values and concerns of our communities, a critically important foundation of our society.

Let me pose a hypothetical situation to illustrate why we should be reluctant to impose a constitutional remedy to a problem that will probably be resolved in an ordinary, State by State political process, consistent with the respect for federalism we Republicans have long claimed as one of our virtues. Those of us who consider ourselves pro-life would welcome the Supreme Court's reversal of the Roe v. Wade decision that found a constitutional right to an abortion. The result of that reversal would be to return the regulation of abortion to the States, where the values of local communities would be influential. Now, further suppose that abortion rights advocates held majorities in both houses of Congress, and rather than argue State by State for liberal abortion laws, they decided to usurp the States' authority by means of a constitutional amendment protecting abortion. Wouldn't we who consider ourselves federalists loudly protest such a move? Wouldn't we all line up on the floor to quote Mr. Madison from Federalist Paper 45, that:

> The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State.

Yes, we would, Mr. President, yes, we would.

I believe that in the ''ordinary course of affairs,'' the American people's clear preference to retain intact the institution of marriage, defined according to the values of our communities as the union of one man and one woman, will prevail, and that attempts to ignore the people's will, either by judicial fiat or by the occasional enterprising politician will, in due course, be overcome. I might be wrong, and I respect the concerns of Americans who believe current circumstances urgently require the constitutional protection of traditionally defined marriage. But I do not believe that recent developments yet pose a threat to marriage that cannot be overcome by means short of a constitutional amendment.

While I will vote in opposition to this amendment, I believe its advocates should be reassured that if in the future the public meaning of marriage is taken from the hands of the people and altered by judges who claim falsely to speak before all others for the people's constitutional ideals, then it will be the people, acting through their elected representatives in this Chamber, who will at that time have the final word. Until then, however, I will trust in the American people and the elected representatives closest to them to pass and enforce laws upholding the institution of marriage in accord with the values of their communities.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I rise today in support of S.J. Res. 1, the Marriage Protection Amendment to the U.S. Constitution. I support this amendment because traditional marriage is the bedrock institution of our society and its integrity must be maintained. The people and State legislatures around the country have approved laws and constitutional provisions to protect traditional marriage, but courts persist in reinterpreting their State constitutions to redefine the institution. I believe that, to prevent that kind of judicial activism from spreading, and to guarantee that people and the States can decide the issue, Congress should approve the marriage amendment and send it to the States for ratification.

In my brief remarks, I will address two basic questions. First, is marriage worth defending? And second, is a constitutional amendment necessary, or can this question be handled through the states?

On the first question, the answer should be clear to all. Traditional marriage—marriage between a man and a woman—is the fundamental institution of our society. That is primarily because marriage is the best environment for the protection and nurturing of children. Traditional families are where we hope that children will be born and raised and where we expect them to receive their values. If we want our Nation's children to do well, we need to do everything we can to ensure that children grow up with mothers and fathers. And the place where that happens best is where mothers and fathers properly unite, in marriage. The state sanctions and encourages marriage not only because it wants to validate a lifelong personal relationship, but, more importantly, because we need a stable institution for childrearing. That is why this issue is of such great importance.

We send a very important message to our children when we stand up for the institution of marriage. We tell them that marriage matters—that traditional family life is a thing to be honored, valued, and protected. We tell them that marriage is the best environment for the raising of children. We tell them that every child deserves a mother and a father. We point them to the ideal. We simply cannot strip marriage of its core—that it be the union of a man and a woman—and expect the institution to survive in its present form. The law of unintended consequences certainly applies here, as in all things. We cannot strip the institution of its essence and expect no adverse consequences.

That leads me to the second question: is a constitutional amendment necessary, or can the future of marriage be handled at the state level? I have heard some of my colleagues argue that this issue is best left to the States. They argue that family law is traditionally a State issue, and that the States are best equipped to manage family law matters. They say that Congress should do nothing, and just let each jurisdiction sort this out on its own.

First, just as a matter of history, some like to say that the definition of marriage is only a State issue, but history shows that the question is a bit more complicated. For example, when Congress admitted Utah as a State in 1896, it expressly required Utah to ban polygamy. In other words, the Federal Government imposed the traditional definition of marriage, because Members of Congress believed that the issue was of national importance. And in general, at least since the Civil War, we have moved increasingly towards a system in which the core questions about how to order our society are answered on a national level.

Second, we should focus on what ''federalism'' actually means. Many opponents of this constitutional amendment suggest that our federalist principles require us to sit on our hands and do nothing. Respectfully, I believe that the underlying principle that gives federalism its power is being misunderstood and misapplied. In fact, I think exactly the opposite is true: a genuine examination of the principles of federalism and States' rights should lead one to support this amendment.

The purpose of federalism is to empower the American people and to bolster democratic participation by ensuring that questions are decided at the local level, wherever possible.

We do not want the Federal Government deciding questions of purely local

importance, so we have limits on Federal power. These limitations are designed not so much to protect State governments, but to ensure that democracy works more efficiently and that policy is set by the American people through the officials that they know better and who are physically closer to them. Thus, federalism is not a dry question of allocating power among governments and politicians. It is about finding the best way to enhance the power of the people themselves.

A vote against this amendment does nothing to enhance the power of the American people. The only thing it does is enhance the power of the courts. To hear this talk of ''States' rights'' and ''federalism,'' you might think that the American people are clamoring for same-sex marriage. In fact, just the opposite is true. Opinion polls consistently show nearly 60 percent opposition to same-sex marriage. Moreover, when citizens are given the opportunity to vote on State constitutional amendments, they support those amendments by an average of 70 percent.

No, as we all know, the danger here is not State legislatures, but judicial activism from the courts. The American people are not deciding this question; the courts are. The alternative to a Federal constitutional amendment is not one in which the people are left to operate their States as laboratories, as Justice Brandeis once suggested, but one in which the people are robbed of any ability to control this issue.

So let us deal with the facts on the ground, so to speak. This is not being ''handled'' by the States today. It is being handled by the courts. Even in the ''reddest of the red'' States such as Nebraska and Oklahoma, each of which adopted State constitutional amendments to protect traditional marriage, the activists have sued Federal court and said those State amendments are unconstitutional under Federal law. The citizens of these States are not being permitted to decide this question. ''States rights'' implies not courts, but the people, making these decisions.

Let's look at what is happening in the courts, with special attention to what has happened since we last debated this amendment.

First, since July 2004, State trial courts in Washington, New York, California, and Maryland all have struck down traditional marriage laws. Those cases are now on appeal. So, compare today versus 2 years ago. In July 2004, we were looking only at Massachusetts. Today, State courts in four other States have followed Massachusetts' lead.

Second, even more State court lawsuits have been filed. In Connecticut and Iowa, same-sex marriage advocates argue that each State's traditional marriage law is unconstitutional, and that the courts must redefine the institution to include same-sex couples.

Third, there has been increased action in Federal courts. In particular, a Federal district court in Nebraska struck down the State's constitutional amendment protecting traditional marriage. The case is on appeal to the Eighth Circuit, and a decision is likely sometime this summer. Regardless of how the case comes out, it shows the aggressiveness of the advocates for same-sex marriage. In Nebraska, 70 percent of voters adopted a constitutional amendment stating clearly that they wanted marriage to be preserved in its present, traditional form. Yet the ACLU still sued.

There has been other Federal court action as well. For example, activists filed a lawsuit in Federal court in Oklahoma challenging the State constitutional amendment enacted by voters, as well as Federal DOMA itself. DOMA also came under fire in California, where a Ninth Circuit panel dismissed a constitutional challenge on technical, standing grounds. Some good news came in Florida, where a Federal district court upheld DOMA's traditional definition of marriage for purposes of Federal law.

So, in summary, there are currently 9 States facing lawsuits challenging their marriage laws—California, Connecticut, Iowa, Maryland, Nebraska, New Jersey, New York, Oklahoma, and Washington. I should add that State supreme courts are expected to rule in New Jersey and Washington sometime this year.

I mention all these cases because they show the folly of relying on ''federalism'' or ''States' rights'' to resolve this national debate. The people are not deciding these lawsuits; judges are. If we do nothing—if we stand aside and let the States work it out, as some of my friends argue, then the American people will see the institution of marriage redefined against their will. It is happening now, and it is going to continue happening for as long as this body punts on this issue.

If we want to stand up for federalism—not to mention traditional marriage—then let's look at how a constitutional amendment works. The constitutional amendment process outlined in Article V of the Constitution is the most democratic, the most grass roots, and the most respectful process available for the establishment of national policy. A constitutional amendment requires the support of ⅔ of both houses of Congress. Then it requires the support of the legislatures of ¾ of the States in the Union. Then, and only then, can the amendment become effective. This is a very high hurdle, but it guarantees that the American people have a full and complete opportunity to speak to the issue, that they can express their views to their Senators, their Congressmen, and their State legislators. It takes time. But in the end, if a constitutional amendment passes, we know that the American people want it.

In other words, Mr. President, the constitutional amendment process enhances federalism and States' rights. It ensures that there is a national consensus on this question, and it pushes the decisionmaking down to the most representative political leaders in our system, rather than allowing a few judges to amend the Constitution by overturning two centuries of our common understanding.

I have much more to say, especially regarding the meaning of this amendment and the political situation in the States, but time is short, so I will ask unanimous consent at the conclusion of my remarks to have printed excerpts from a policy paper that I issued as Chairman of the Senate Republican Policy Committee, ''Why a Marriage Amendment is Still Necessary,'' which was published back on March 28.

To cite ''federalism'' or ''States' rights'' is to avoid the issue as it is actually playing out. Instead, we must decide whether this question belongs in the courts, where it is now, or whether it belongs in the legislatures and before the people. I submit that we should not stand in the way of the American people's right to speak on this question. I have faith that this constitutional amendment process will work—that the difficult social and cultural questions posed by same-sex marriage can be resolved satisfactorily through the democratic process of passing this constitutional amendment.

But I am even more sure that, if we fail to send this amendment to the people, and if the courts continue on their current path, our Nation will face decades of division that will make current frustrations with judicial activism seem quaint in comparison. If we refuse to act, the big loser will be not only traditional marriage, but the people's respect for the judicial system and for the rule of law itself. Such a breakdown would be disastrous, but it is avoidable. It is avoidable if Congress votes ''yes'' and sends this amendment to the States for ratification.

Mr. President, again, it should go without saying that traditional marriage as we understand it between men and women is a fundamental institution of our society and that we should do everything we can to ensure its preservation. The reason that is so is primarily because marriage is the best environment for the protection and the nurturing of children. We send a very important message to our children when we stand up for this institution. We tell them that marriage matters, that traditional family life is a thing to be honored and valued and protected. We tell them that marriage is the best environment for raising of children, that every child deserves a mother and a father. We point them to this ideal. We simply cannot strip marriage of its core, that it be the union of a man and a woman, and expect the institution to survive in its current form. The law of unintended consequences certainly applies here as in all things. We can't strip the institution of its essence and expect no adverse consequences.

That brings us to the second core question: Is a Federal constitutional amendment necessary to preserve this institution? I have come to the conclusion that it is. The question is whether this matter can be and is properly being handled at the State level, as some of our colleagues have contended. It is being handled at the State level to be sure, but the question is whether it is being handled by the people or by their elected representatives or whether in effect the Constitution is being rewritten by the courts, whether a couple of centuries of tradition about a common understanding of what traditional marriage meant is being eroded by court decisions rather than the will of the people.

Opinion polls consistently show nearly 60 percent opposition to same-sex marriage, and when citizens are given the opportunity to vote on State constitutional amendments, they approve them by an average of about 70 percent. So the danger here is not State legislatures but judicial activism from the courts. The American people are not deciding this question; the courts are. That is why the notion that we need to preserve federalism or States rights is, in my view, misplaced.

The alternative to a Federal constitutional amendment is not one in which the people are left to operate their States as laboratories, as Justice Brandeis once suggested, but one in which the people are robbed of any ability to control the issue because it is being resolved in the courts. Even in the reddest of the red States, such as Nebraska and Oklahoma, each of which adopted State constitutional amendments to protect traditional marriage, the activists have sued in Federal court and said that those amendments are unconstitutional under Federal law. So the citizens of these States are not being permitted to decide the question. States rights implies not the courts but the people making the decisions. That will not be what happens if these constitutional provisions are thrown out by the courts.

Look at what happened in just the last couple of years here, since we last debated the amendment. In 2004, State trial courts in Washington, New York, California, and Maryland all struck down traditional marriage laws. Those cases are now on appeal. So compare today versus 2 years ago. In July 2004, we were looking only at Massachusetts. Today, State courts in four other States have followed Massachusetts' lead. So the concern about the courts intruding into this area is not a hypothetical future concern but a reality today.

Even more State court lawsuits have been filed—for example, in Connecticut and Iowa. In addition to that, there is increased action in Federal courts. In particular, the Federal district court in Nebraska struck down a State's constitutional amendment protecting traditional marriage, as I mentioned a moment ago. That case is on appeal to the Eighth Circuit.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KYL. Mr. President, would I be out of order if I asked for unanimous consent for 1 more minute to conclude my remarks?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. In summary, to summarize these cases, there are currently nine States facing lawsuits challenging their marriage laws—California, Connecticut, Iowa, Maryland, Nebraska, New Jersey, New York, Oklahoma, and Washington—and the State supreme courts are expected to rule in New Jersey and Washington sometime this year.

So the bottom line is this: The people are not deciding the Constitution, the judges are. If we do not do anything, if we stand aside and let the States work it out, as some of my friends have suggested, then the American people are likely to see the institution of marriage redefined against their will, and it will be much more difficult to adopt a constitutional amendment after these rulings are in place than it is to do so before they are in place.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks excerpts from a policy paper that was issued by the Senate Republican Policy Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The following are excerpts from a policy paper titled ''Why a Marriage Amendment is Necessary,'' released by the Senate Republican Policy Committee on March 28, 2006. Footnotes and citations are omitted.

SUMMARY OF PENDING LAWSUITS

As predicted at the time, the Massachusetts decision in Goodridge proved the catalyst for a flood of new lawsuits. As of March 2006, nine states face active lawsuits challenging their traditional marriage laws: California, Connecticut, Iowa, Maryland, Nebraska, New Jersey, New York, Oklahoma, and Washington. Those cases are summarized below:

STATUS OF PENDING LAWSUITS CHALLENGING STATE MARRIAGE LAWS

California: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2004. Plaintiffs won in trial court in April 2005. Appeal is now pending in state court of appeals in San Francisco. A complete timeline is unclear, but no final decision from state supreme court is expected until 2007 at the earliest.

Connecticut: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2004. Case is pending in state trial court in New Haven. A complete timeline is unclear, but no final decision from state supreme court is expected until 2007 at the earliest.

Iowa: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2005. Case is pending in state trial court. A complete timeline is unclear, but no final decision from state supreme court is expected until 2007 at the earliest.

Maryland: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2004. Plaintiffs won in trial court in January 2006, and state has said it will appeal. A complete time line is unclear, but no final decision from state supreme court is expected until 2007 at the earliest.

Nebraska: Federal constitutional challenge to state constitutional amendment protecting traditional marriage. Plaintiffs won in federal district court, and the state appealed to the federal appeals court. Oral arguments were heard in February 2006, and a decision is expected in the spring or summer of 2006.

New Jersey: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2002. The state successfully defended traditional marriage laws in trial and appeals court, and the case is now before the state supreme court. Oral arguments were heard in February 2006, and a decision is expected in the summer or fall 2006.

New York: Multiple direct challenges to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2004. After conflicting results in lower state courts, the state's highest court is now reviewing the case. A decision is expected no sooner than late 2006.

Oklahoma: Federal constitutional challenge to state constitutional amendment protecting traditional marriage. Plaintiffs also challenge federal DOMA. Filed in 2004. Case is pending in federal district court. A motion to dismiss has been pending since January 2005, and a decision is expected in 2006.

Washington: Direct challenge to state marriage laws. Plaintiffs seek redefinition of marriage to allow same-sex marriage. Filed in 2004. Plaintiffs won in state trial court, and the cases are now on appeal to the state supreme court. Oral arguments were heard in March 2005, and a decision is expected in 2006.

Note that in four of those states facing current challenges—California, Maryland, New York, and Washington—state trial courts have already struck down marriage laws and found a right to same-sex marriage in state constitutional provisions dealing with equal protection and due process. Those decisions are stayed pending appeal. State courts in Hawaii, Alaska, and Oregon had previously done the same, but state constitutional amendments subsequently reversed those decisions.

THE INCREASE IN LEGAL CHALLENGES

These current lawsuits are part of a growing trend. Until recently, very few states had seen attacks on their marriage laws. As of 1992, lawsuits had been filed in Minnesota (1970), Kentucky (1973), Washington (1974), Colorado (1980), and Hawaii (1990). As the Hawaii case gained traction, activists filed new lawsuits in Alaska (1995), Vermont (1997), Massachusetts (2001), New Jersey (2002), Indiana (2002), Arizona (2003), and Nebraska (2003). Since the Massachusetts high court struck down traditional marriage laws in 2003, cases were filed in Alabama, California, Connecticut, Florida, Maryland, New York, North Carolina, Oklahoma, and West Virginia in 2004, and in Iowa in 2005. In many of these states, such as Florida, California, and New York, more than one lawsuit was filed. The number of states that have faced challenges to their marriage laws has more than quadrupled since the early 1990s.

THE COMMON THREAD IN THE LAWSUITS CHALLENGING TRADITIONAL MARRIAGE LAWS

These lawsuits are brought under a variety of state constitutions or, in the federal cases, they are based on the U.S. Constitution, but the cases' substance are very similar.

First, nearly all the lawsuits are brought by the same cadre of legal activists at the

American Civil Liberties Union, the Gay & Lesbian Advocates & Defenders, Lambda Legal Defense & Education Fund, and the Freedom to Marry coalition. This is a coordinated and well-funded national campaign.

Second, on substance, these advocates regularly argue that civil marriage is a fundamental right; that denying civil marriage to same-sex couples violates their right to equal treatment based on sex and sexual orientation; and that the state can offer no legitimate justification for not redefining marriage to include same-sex couples.

Third, the advocates frequently rely on the U.S. Supreme Court's decisions in *Lawrence* v. *Texas*, 539 U.S. 558 (2003) (holding that sodomy bans are unconstitutional) and *Romer* v. *Evans* 517 U.S. 620 (1996) (holding unconstitutional a Colorado state constitutional amendment barring enactment of laws aimed at benefiting homosexuals), as general support for the transformation of equal protection and due process jurisprudence to require same-sex marriage. Even those challenges that purportedly rely on state law also look to federal cases for support.

Finally, the advocates often rely on the Massachusetts decision in Goodridge as persuasive authority, along with the similar trial court opinions in Washington and New York. Thus, in our integrated legal system, court cases in one state affect litigation elsewhere; one cannot argue that what happens in Massachusetts has no extraterritorial impact.

CITIZENS ARE FIGHTING TO PROTECT STATE MARRIAGE LAWS

When the advocates began this effort in Hawaii in the early 1990s, only a few states had expressly defined marriage as between a man and a woman (although state common law typically assumed it). Moreover, no states had amended their constitutions to protect against state court judicial activism. After the Hawaii court attempted to redefine marriage, however, citizens became politically engaged to ensure that their states' laws were clear. After Americans saw just how far judges would go—striking down the basic definition of marriage, and calling for its ''eradicate[ion]''—they stepped up their activity and began to enact constitutional amendments that would shield the marriage definition from the judges.

The only states without statutory protections for traditional marriage are Massachusetts, New Jersey, New Mexico, New York, and Rhode Island. Moreover, voters in at least seven states will consider state constitutional amendments in 2006, including Alabama, Idaho, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin. Other states with more cumbersome constitutional amendment processes, such as Indiana, are following their state-specific processes to ensure that their state constitutions are amended as soon as possible.

Not only have nearly all states enacted some form of protection for traditional marriage, but they have done so with supermajority support. In the 19 states that have considered state constitutional amendments, all have passed, and with an average support of 71.5 percent. It is worth noting that the support for constitutional protections for marriage laws was strong regardless of whether the elections occurred in conjunction with higher-turnout elections such as November 2004 or state primary or special elections (in Louisiana, Missouri, and Kansas).

FEDERAL DOMA IS INADEQUATE TO PROTECT TRADITIONAL MARRIAGE LAWS

Perhaps the most common misunderstanding about the same-sex marriage debate is the notion that the federal Defense of Marriage Act, Pub. L. 104–199, 100 Stat. 2419 (September 21, 1996) (''federal DOMA'' or ''DOMA'') is a sufficient guarantor of traditional marriage laws. It is not, nor was it designed as a comprehensive solution to judicial activism on the same-sex marriage question.

WHAT DOMA DOES AND DOES NOT DO

DOMA was a limited law passed to address two distinct issues—forced interstate recognition and the definition of marriage for the purposes of federal laws and regulations.

Interstate recognition: DOMA's primary purpose was to bolster state courts' preexisting power to refuse recognition to out-of-state marriages that do not comply with the state's laws and public policy. DOMA did this by making clear that the Constitution's Full Faith & Credit clause should not be read to require interstate recognition of same-sex marriages. See 28 U.S.C. §1738C. However, it is crucial to understand that, as a matter of tradition and comity, states regularly recognize marriages that were solemnized in other states. It is also well established that a state court may refuse to recognize an out-of-state marriage if doing so would contravene local ''public policy.'' At least in the 45 states with laws defining marriage as man-woman, the public policy preferences should be clear, and state courts, therefore, should be constrained to refuse recognition of out-of-state same-sex marriages.

DOMA's effect on interstate recognition is, therefore, quite limited. It just addresses the situation in which a state court refuses to abide by its state public policy and relies on the Full Faith & Credit clause in recognizing an out-of-state, same-sex marriage. However, DOMA will not have any effect on a case in which an out-of-state, same-sex marriage is recognized because the judge believes that the equal protection or due process clauses require it. DOMA does not ''prevent'' any court from recognizing out-of-state marriages; it merely removes one of several rationales that a court could use in doing so.

Definition of marriage for purposes of federal law: DOMA had a second purpose: to define marriage for purposes of federal law. Section 2 of DOMA states that, for the purposes of federal statutes or any ruling, regulation, or interpretation of federal administrative action, ''the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or wife.'' See 1 U.S.C. 7. A well-known effect of this language is to ensure that only persons in traditional marriage can file income tax returns as married couples, but the reach is much broader. The General Accounting Office has found that, ''as of December 31, 2003, our research identified a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.''

THE CONSTITUTIONAL CHALLENGES TO DOMA

Both provisions of federal DOMA have been challenged in federal court. For example, activists have challenged the interstate recognition provision in a case pending before the U.S. Court of Appeals for the Ninth Circuit, although the district court held the plaintiff lacked standing to challenge that provision. The section defining marriage for federal purposes is being challenged in that same Ninth Circuit case, as well as in federal cases pending in Oklahoma and Washington state. In each case, the plaintiffs argue that the U.S. Constitution's equal protection and due process guarantees require the recognition of same-sex marriages, and that efforts to limit the interstate reach of same-sex marriage or to limit marriage to heterosexual unions for purposes of federal law are unconstitutional. To date, the federal government has been successful in defending DOMA, for example, by prevailing in federal district court in Florida. Nevertheless, same-sex marriage advocates have made clear that they believe DOMA is unconstitutional and that they will continue to press their position in federal courts.

These lawsuits involving federal DOMA do not form the ''core'' of the campaign in the courts. Instead, same-sex marriage advocates are focusing on direct attacks on state marriage laws, both through state court challenges to statutory DOMAs, and through federal court challenges to state constitutional amendments. The key to the expansion of same-sex marriage in the courts is not striking down federal DOMA, but convincing courts at all levels that same-sex marriage is a fundamental right that cannot be denied.

WHAT HAPPENS IF CONGRESS DOES NOTHING?

Failing to act to protect traditional marriage laws by a constitutional amendment will, in the end, likely result in the judicial imposition of same-sex marriage on a nationwide basis. First, some state supreme courts undoubtedly will strike down state marriage laws. Second, cultural and legal confusion will develop over a period of years as the nation struggles unsuccessfully to deal with a patchwork, state-by-state approach. Third, federal courts will be forced to address fundamental questions of due process and equal protection that will emerge. And, as a result of certain liberal-leaning precedents, the final step could be a U.S. Supreme Court ruling that marriage laws be rewritten to require same-sex marriage in all states.

STEP NO. 1: STATE-BY-STATE FRAGMENTATION VIA JUDICIAL ACTIVISM

At present, legal activists are not asking the courts to impose same-sex marriage on a nationwide basis. Instead, they are targeting their efforts on particular states. As noted above, nine states face challenges to their marriage laws, and as one same-sex marriage advocate wrote earlier this month, it is highly likely that one or more of these state supreme courts will overturn traditional marriage laws. Evan Wolfson, one of the premier gay marriage advocates in the nation, recently told The American Prospect that the movement's strategy over the next several years is to have 10 states legalize same-sex marriage.

Thus, the near-term tactical goal of these activists is not national cohesion, but national fragmentation of marriage definitions. Same-sex marriage will be legal in some states, but illegal in neighboring states. The results will not necessarily be regional, either. For example, Washington and California courts may impose same-sex marriage on their states, but Oregon's citizens have already protected themselves for now by state constitutional amendment. A Maryland court has already struck down the states' laws, while Virginia will soon adopt a state constitutional amendment. Moreover, lawsuits are pending in Iowa, Nebraska, and Oklahoma, and more could spring up in the American heartland. Same-sex marriage, already a reality in Massachusetts, will crop up throughout the nation.

STEP NO. 2: LEGAL AND CULTURAL CONFUSION DEVELOPS DUE TO FRAGMENTATION

The state-by-state fragmentation of the nation serves the goals of same-sex marriage advocates because the result will be confusion and chaos that cannot long endure.

First, marriage is a fundamental aspect of American culture. The nation has a variety

of regional and state-by-state cultural variations, but it also has core values and standards that apply on a national level. Marriage's core components—two people, husband and wife—should be common throughout the nation. This need for cohesion on the nature of marriage was imperative 100 years ago, when Congress required Arizona, New Mexico, Oklahoma, and Utah to include in their state constitutions express provisions banning polygamy ''forever'' before they could be admitted to the Union. It is even more so today, when the American experience is much more national than regional. As Evan Wolfson has written, ''America is one country, not fifty separate kingdoms. If you're married, you're married.'' Wolfson is correct, and he and his allies are counting on same-sex marriage in a few states (especially large and culturally influential states such as California, New York, and Massachusetts) to pave the way for the spread of the institution throughout the nation. Resistance to this growth will be strong, as the state-level DOMA activity shows. The inevitable result will be increased social and cultural division.

Second, the resulting cultural division will inevitably end up playing out in the courts, as same-sex marriage puts new stresses on the legal system. Homosexual couples who have marriage licenses have every right to move anywhere they want in the nation; it is a fundamental right protected under the Constitution. Many of these lawsuits will have unique fact patterns that cannot be anticipated, because same-sex couples will have many of the same day-to-day interactions with the world as heterosexual couples do. Some will get divorced when their marriage fails. They will execute and enforce wills when one dies. They will open businesses, engage in the economy as a household, and face occasional legal conflicts. Child custody battles will occur, as will cases involving run-of-the-mill torts and contract disputes. But as courts struggle to fit their legal relationships into existing state legal systems, the cases will take on a constitutional dimension.

Consider an example of a complicated case involving recognition of same-sex marriage that is already before the courts. Two Washington state women received a marriage license in Canada and later declared bankruptcy back in Washington. They filed their petition jointly, citing their Canadian marriage license. Because bankruptcy law is federal, and because DOMA directly addresses the definition of ''spouse,'' the bankruptcy court was required to rule on the constitutionality of DOMA as applied to this bankruptcy petition. In 2004, the bankruptcy court upheld DOMA's federal definition, and an appeal was taken to the federal district court, where it is pending today. The federal district court has stayed consideration of the case until the Washington Supreme Court rules on whether same-sex marriage should be mandated in that state, which, the petitioner argues, could impact how the bankruptcy petition should be treated.

This bankruptcy case is one example of the many ways in which same-sex ''married'' couples living in non-same-sex-marriage states can end up in the legal system. Although 45 states have an expressed policy of opposition to same-sex marriage, and the courts in those states should uphold that policy, new fact patterns will constantly arise. Matters involving everything from divorce to child custody to health care to probate will be more complicated and require case-by-case analyses in the courts. Inevitably, courts will reach different conclusions on how to integrate same-sex couples with marriage licenses into the legal and governmental structures of non-same-sex-marriage states. The rules will vary dramatically across state lines, and reasonable questions of fundamental fairness will be raised by those couples.

STEP NO. 3: COURTS MUST STEP IN AND SET NATIONAL MARRIAGE POLICY

Such a fragmented legal system cannot survive indefinitely. Yet the solution to that confusion and chaos is not likely to be the state or federal legislatures, but the courts that are confronting these problems on a routine basis. Federal courts will become increasingly involved (as they already are), and splits in the federal courts will develop. The legal advocates will renew their challenges to DOMA's federal definition of marriage, and they will press courts to recognize out-of-state marriages—first for limited purposes, and then on a wholesale basis. (As discussed above, DOMA's interstate recognition provisions will not bar any court from forcing recognition of those marriages if that decision is based on other parts of the Constitution.)

As federal constitutional cases develop, it is likely that different circuit courts of appeals will resolve some of the core constitutional questions differently. Eventually, then, a question regarding the federal definition of marriage and/or interstate recognition will go to the Supreme Court. Which way will the Supreme Court rule? Nothing in the Constitution prohibits same-sex marriage, and, in our current constitutional system, the various applications of marriage law are typically left to the states. Consequently, it would be exceedingly unlikely for the Supreme Court actually to invalidate same-sex marriages. On the other hand, it will have a duty to assist the lower courts in the management of the plethora of thorny legal problems that same-sex marriage will have created in a patchwork system. The Court will be under enormous pressure to craft a national solution. The problem for traditional marriage supporters is that the Supreme Court has expanded (or distorted, in some views) the Constitution's equal protection and due process clause enough that a majority would have precedents to stretch and manipulate if it were so inclined. Justice Scalia, in particular, has warned that the Supreme Court's decisions in Lawrence v. Texas and Romer v. Evans now give same-sex marriage advocates non-trivial arguments in favor of judicial imposition.

In summary, a patchwork of definitions is not likely to endure; to think that it will is little more than wishful thinking. If Congress leaves this question to the state courts, then the ultimate arbiter will be the Supreme Court. And over time, given the existing precedents and the threat that some Supreme Court Justices would twist the case law for social engineering purposes, it is unrealistic to rely on the high court to be a bulwark in defense of traditional marriage laws.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it's no surprise that the American people are frustrated with the Republican Senate these days. They deserve and want action on the enormous challenges we face as a Nation—the endless and costly war in Iraq, the many dangers to our national security, skyrocketing gas prices, soaring health care costs, the upcoming hurricane season. How we can have safer schools and better care for our children, and so many other urgent issues. But instead of dealing with these real priorities, the Senate Republican leadership is asking us to spend time writing bigotry into the Constitution.

Why aren't we taking up the defense authorization bill, which is so vital to our national security? It provides the authorization for the salaries for our troops in the field, including a 2.2 percent pay raise. It provides urgently needed equipment for our troops to carry out their missions in Humvees with safer body armor. It authorizes the food and supplies our troops need in Iraq and Afghanistan. It contains funds to care for those who are injured or wounded, or who may be suffering from posttraumatic stress disorder when they come home. But the Republican leadership of the Senate has told us that supporting our troops has to wait.

Let's be clear about what this debate is really about. It is a blatant effort to deny some members of our society the right to receive the same benefits and protections that married couples now have. Like this Senate's intrusion into the Terry Schiavo case, it is a cynical attempt to score political points by overriding state courts and intruding into individuals' private lives and most personal decisions. It's the politics of prejudice and division at its worst.

Make no mistake—a vote in support of this amendment has nothing to do with the ''protection of marriage.'' A vote for it is a vote against civil unions, against domestic partnerships, and against all other efforts by States to treat gays and lesbians fairly under the law. It's a vote to impose discrimination on all 50 States, and to deny them their right to write and interpret their own State constitutions and State laws. It's a vote to deny States the right to define what marriage equality means.

Marriage is a solemn commitment to plan a future together, to share in life's celebrations, to be there as a source of comfort to ease life's burdens and pains. This impacts real families with real-life struggles. When the citizens of a State have decided to recognize those families—through their State constitution or State laws—the Senate has no business undermining their personal, private decisions.

Some even claim that our recent action in Massachusetts is a threat to the rest of the Nation. Over 8,000 couples have celebrated their commitment to each other since our Supreme Judicial Court ruled that the State constitution requires marriage equality.

In ruling to allow same-sex marriage, our State's Supreme Judicial Court was interpreting the Massachusetts constitution, not the U.S. Constitution. The court ruled that our State's constitution forbids the creation of second-class citizens. It concluded that the State could not deny the protections, benefits and obligations of civil marriage to two individuals—regardless of gender—who wish to marry.

Far from being a right created—as our opponents like to say—by activist judges, the right of all our citizens to

have equal treatment under Massachusetts State laws was granted and approved by the people of Massachusetts when they voted on and adopted our State constitution. The people said that our State's constitution forbids the creation of second-class citizens, and our courts affirmed equality for all.

In Massachusetts, civil marriage brings all the benefits of a marriage license—and equal status under the marriage laws, which touch upon nearly every aspect of life and death. In addition to all the intangible benefits of marriage, a civil marriage is a contract—it grants valuable property rights—protection against creditors and the automatic entitlement to the property of their spouse's estate when he or she dies.

Under State laws in Massachusetts and many other States, marriage confers property rights. And the specific property rights vary from State to State. Some States have a community property regime. Others, like Massachusetts, do not.

But it has always been a bedrock principle of our form of government that the kind of State property rights flowing from a civil marriage contract is a matter of State law, not Federal law. And the laws governing the property rights of a married couple have always varied from State to State.

For example, a couple married in Louisiana will have all property owned in that State subject to the community property laws of that State. But if they own property in another State, that property is governed by the laws where the land is owned.

Now some of our colleagues want to federalize the rights flowing from civil marriage and overrule individual State laws. How odd that the same people who oppose Federal regulation in almost every other area now want a Federal constitutional amendment to eviscerate State contract and property laws, but only when they grant benefits to same-sex couples. That is discrimination, and it's wrong.

In Massachusetts, marriage—and the stability and security it brings to families—is alive and well. Indeed, Massachusetts has the lowest divorce rate in the Nation. We're having plenty of public debate and democratic process. The sky is not falling. Indeed, even the Boston Herald editorial page called this week's Senate debate what it really is ''pandering on a hot-button issue.''

I'm proud that Massachusetts continues to be a leader on marriage equality. Being part of a family is a basic right, and I look forward to the day when every State accepts this basic principle of fairness.

Obviously, those who disagree with Massachusetts law have a first amendment right to express their views. But there's no justification for undermining the separation of church and State in our society, or for writing discrimination into the U.S. Constitution.

Supporters of the amendment claim that religious freedom is somehow under attack. It is—but the attack comes from this Federal marriage amendment—not from what's happening in the States. This amendment is an Anti-Marriage Amendment. It tells churches they cannot recognize a same-sex marriage, even though many churches are now doing so.

No church in Massachusetts is required to recognize any civil marriage. Indeed, my own Catholic Church does not recognize most postdivorce second marriages between a man and a woman, and that's their legal prerogative. By the same token, they are not required to recognize same-sex marriages. The law of each church is what determines the religious aspects of a sacramental marriage. But the law of the States is what determines the civil aspects and property rights flowing from a marriage contract.

We cannot—and should not—require any religion or any church to accept any marriage as sacramental. That's up to the particular religion. But it is wrong for our civil laws to deny any American the basic right to be part of a family, to have loved ones with whom to build a secure future and share life's joys and tears, and to be free from the stain of bigotry and discrimination.

According to the 2000 Census, same-sex couples live in virtually every county in the country. That's almost 600,000 households. Nearly one-quarter of these couples are raising children. That's an estimated 8 to 10 million children being raised in gay and lesbian partnered homes. As many as 14 million children in America have a gay or lesbian parent.

Despite these growing numbers, many here in the Senate want to deprive these men and women—these children—and their families—of the legal protections and benefits associated with marriage. These families stand up to private bigotry and prejudice in their ordinary activities—why would the Federal Government make their lives harder by writing discrimination into the Constitution? It's wrong for Congress to add another burden to these families already struggling to live their lives and take care of each other.

The General Accounting Office has identified 1,138 protections and benefits provided by the Federal Government on the basis of marital status. Many of these are laws relating to family and medical leave, social security benefits, and tax benefits. Gay and lesbian couples deserve the same rights as married couples, including the right to be treated fairly by the tax laws, to share insurance coverage, to visit loved ones in the hospital, and to have health benefits, family leave benefits, and the many other benefits that automatically flow from marriage.

Supporters of the Federal marriage amendment claim the need to stop activist judges. Our colleagues should recall the words of another activist court:

The freedom to marry has long been recognized as one of the most vital personal property rights essential to the orderly pursuit of happiness.

The activist judges stating this fundamental belief were part of the Supreme Court's 1967 decision in the landmark case Loving v. Virginia, which held that marriage is a basic civil right, and that freedom to marry a person of another race may not be restricted by racial discrimination.

Now, nearly 40 years later, I urge the Senate not to turn back the clock on this progress, or start writing discrimination into our country's most cherished document. The framers never wanted it to be used for short-term political games—that's why it is so difficult to amend. As Chief Justice John Marshall said, the Constitution is ''intended to endure for ages to come.''

Two years ago, we defeated a disgraceful attempt to force this right wing agenda into the Constitution and we're prepared to do so again. There is too much at stake to let the politics of bigotry prevail. I urge the Senate to reject this so-called Federal marriage amendment, and get back immediately to the real business of the Nation. Save the pandering for rightwing supporters on the campaign trail.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I am honored to follow the great Senator from Massachusetts and join with him and others in opposing this proposed constitutional amendment. I do so because it is un-American, un-Christian, and unnecessary.

Let us be clear that this proposal is not about protecting marriage in America.

Marriage may need more people to practice it, but it does not need the Senate to protect it. The Founders of this great Nation exercised tremendous wisdom by designing a system in which Government would stay out of the private lives of its citizens and a system in which Government would stay out of the province of religion. This amendment would violate both.

This country was founded on the principle that all men and women are created equal, that they are endowed by their creator with certain unalienable rights. Among them are life, liberty, and the pursuit of happiness. To secure those rights, our Founders wrote a Constitution which guarantees every law-abiding American citizen the same equal rights and protections. Our country's Founders were not perfect. In fact, they were highly discriminatory. They initially denied those full and equal rights to women and to African Americans. This country's social progress has been highlighted by removing those constitutional discriminations based on gender or race or anything else.

Now, for the first time in our Nation's history, the proponents of this amendment would add discrimination to our Constitution. They would tell one group of people, a social minority, that equal rights and equal protections

do not apply to them, not only by the laws which exist today, Federal and State laws which ban gay marriages, not only by the social conventions which deny their recognition, but by an unprecedented amendment to the U.S. Constitution which targets gays and lesbians alone, which says that of all the social practices in this country, theirs alone are supposedly so abhorrent, theirs alone are supposedly such a threat to our social order that they must be singled out for this unique form of discrimination.

Unfortunately, the proponents of this constitutional amendment have it mixed up. It is the Constitution that needs to be protected—from them. It is the foundation of our democracy that needs to be saved—from them. The foundational principle of a democracy is its tolerance of individual differences. Even the most repressive totalitarian government in the world allows individual behaviors that it agrees with. The true test of a democracy is the government's allowance for differences. That doesn't mean that we agree with those differences. It doesn't mean that we like them. It doesn't mean that we would choose them for ourselves or wish them for our children. In fact, the opposite. We can disagree with them, dislike them, and reject them for ourselves and our children.

But if we are a democracy—if we are a democracy—we allow other citizens to be different from ourselves, to be unlike us. We grant them the liberty to pursue their own form of personal, private happiness so long as it does not interfere with our own. Which other adults, American adults are attracted to, want to live with or commit to is their business and their right, not the business of 100 politicians in the Senate. That is why this amendment would not only alter the U.S. Constitution, it would alter our democracy in a way that is destructive to both.

In addition to being un-American, this amendment is also Un-Christian. I hesitate to bring religion into this debate. I am highly skeptical of politicians who do so. Giving a Bible to a politician is akin to giving a blowtorch to a pyromaniac. However, I reread the New Testament in preparation for this debate. I cannot find a single instance in any of the four gospels in which my saviour Jesus Christ speaks a single word against same-sex marriages or even same-sex relationships. He intones 6 times against divorce and 12 times against adultery. Yet I am not aware of any proposed constitutional amendments to ban either of them, nor would I support them.

What I also know is that he preached for love and acceptance and against hatred and discrimination. He said the great commandment was to love God and the second was like unto it, to love thy neighbor as thyself, not just your family member, not just your friend, but to love your neighbor, whoever happens to be living beside you, as you would yourself.

There is no love in this constitutional amendment. There is discrimination, and underneath discrimination lies judgment and hatred. Jesus said also to beware of false prophets and charlatans, the fake good doers. He said the way to tell the difference is that the true believers practice love, while the false prophets preach hate. That is why this amendment is un-Christian.

It is also unnecessary. There is no rampaging threat to the institution of marriage, as the amendment's proponents pretend. There are no rabid activist judges raging unchecked across the legal landscape. They are figments of unchecked imaginations or clever contrivances by master public manipulators who have conjured up some nonexistent threat and now present themselves as the saviours of civilization.

We are spending 3 days on the floor of the Senate to indulge their political pandering. We haven't spent 3 days debating the war in Iraq during this entire session of Congress, nor Iran's development of nuclear weapons, nor this year the gasoline price crisis afflicting our citizens. No, the Senate's Republican leadership is avoiding the real threats to our country and focusing instead on the divisive, destructive nonexistent ones.

Existing Federal law, the 1996 Defense of Marriage Act, defines marriage nationwide as between a man and a woman and states that no State need recognize a same-sex marriage. My State of Minnesota is 1 of 45 States that have passed similar State restrictions. This proposed constitutional amendment is unnecessary overkill. It is predatory politics, preying upon a minority of American citizens who are of the most discriminated against in our society today. I don't understand why this Senate would want to exploit the prejudice and even hatred which still exists in our society against GLBT men and women. I am not a psychiatrist. I will leave it to them to explain why homophobia trumps racism, sexism, nationalism, and religious intolerance, but it does.

The discrimination against people because of their sexual orientations they were born with or acquired indelibly early in life is vicious, ugly, and cruel. It is the immoral and it should be illegal. And it should not be practiced in the Senate.

I sympathize with the many decent-minded, well-intentioned, nd religiously devout Americans who struggle with their personal feelings toward homosexuality. Many have grown in understanding and acceptance. They want to do what is right, even if it doesn't feel entirely right to them. They and their feelings are being unnecessarily used in this charade. But I have no sympathy and I have no respect for the charlatans who are using them for their own self-serving political purposes, who are spreading prejudice and discrimination, who claim the moral high ground while they reach into their emotional cesspools and hurl their slime at decent and innocent human beings who are trying to live their private lives as God created them and under the promises of this American democracy.

What we ought to do is leave marriage up to God. In the religious marriage services of my faith, the minister says that marriage is an institution created by God. Thus, we should leave the definition of marriage to those ordained by God, the leaders of the respective organized religions, and we should redefine the legal term for marriage to civil union or some other words and make that legal contract, with its rights, protections, and responsibilities, available equally to any two adult citizens as the equal protection clauses of our Constitution require.

That would be an American, a Christian, and a just resolution to this situation, one that elevates and enlightens us, one that continues the progress in our country toward acceptance and understanding, one that honors our common humanity.

Those are the reasons I urge my colleagues to oppose and defeat this cruel amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I have come to the floor today to add my voice to the rising chorus of people both here in the Senate and back in my home State of Iowa who are fed up with the misplaced priorities of the Republican leadership in this Congress. Our country faces mounting challenges: High energy prices, skyrocketing health care costs, tens of millions of Americans without health insurance, the cost of college tuition going through the roof, individuals with minimum wage jobs going nearly a decade without a raise. So how does the leadership here respond to these challenges? By squandering a week of the Senate's time debating a constitutional marriage amendment that has already been soundly rejected by the Senate and by debating repeal of the estate tax which would benefit only about 3 out of every 1,000 people in America at the most and would add $1 trillion to the deficit in the coming years, so that the superrich can get yet another tax break, a tax break that won't build one additional school, would not provide one new additional job, while working families get absolutely nothing.

Again, the great majority of American people are getting madder and madder about this. All you have to do is look at the polls of Congress. The

only thing lower than President Bush's polls is the standing of Congress. You wonder why? Look at what we are debating while all of these issues go by the wayside. What about the real needs and concerns of working Americans and their families.

Let me give one case in point. The majority leader cannot find time to bring H.R. 810 to the floor. It is pending at the desk. It was passed by a bipartisan majority in the House of Representatives—a bill to lift restrictions on embryonic stem cell research. Evidently, we don't have time. No time? Well, the majority party found plenty of time this week for these two dubious, devisive measures. But when it comes to the No. 1 research priority of the American people—embryonic stem cell research—the majority leader refuses to bring it to the floor; we don't have the time.

This is outrageous. No wonder the American people say Congress is not doing anything. We are not doing anything to address the real needs of our people.

Two weeks ago, on May 24, we reached the 1-year anniversary of the House passage of H.R. 810, the Stem Cell Research Enhancement Act. This bill is supported by the majority of Senators on a bipartisan basis. It enjoys the support of large majorities in every public opinion poll. Yet we cannot bring it up. Removing the straitjacket on embryonic stem cell research is a matter of life and death for millions of Americans. As the Senate squanders yet another week, people we love are dying from Parkinson's and Lou Gehrig's disease and juvenile diabetes. People are unable to walk due to spinal cord injuries. These Americans are desperate for progress on embryonic stem cell research, which is being blocked by the majority leader's failure to allow H.R. 810 to come to the floor for debate and a vote. No time. Yet we have time to debate this constitutional amendment on marriage, which has been soundly rejected already by the Senate, and which everybody knows will be soundly rejected again, or we will have time to bring up for a vote the repeal of the estate tax, benefiting only the richest of the rich in our country. We have time for that, but we don't have time to bring up a bill to open the doors of medical research that hold such promise for people with incurable diseases.

There are also other urgent priorities being sidetracked. Forty-five million Americans have no health insurance. The majority leader says there is no time to debate this. There is no time to consider a measure that would make it possible for small companies to offer employees a health care plan similar to the one we have in Congress. Indeed, we Democrats were prevented from getting an up-or-down vote on this during the so-called Health Care Week last month.

In the Midwest, we have a bill that is very important not only for the Midwest but for the rest of the country, which is the Water Resources Development Act. We have 81 signatures on a letter, Republicans and Democrats, to the majority leader supporting this bill, asking that it be brought up. That is not only more than it takes to break a filibuster, if this was one—and I don't think there is one pending on it or to override a veto—that is more than two-thirds. Yet no action on it. I guess we don't have time.

The majority leader says we have time this week to consider a mammoth tax cut for the wealthiest Americans, but we don't have any time to consider a bill to raise the minimum wage for Americans at the bottom. The minimum wage has been stuck at the low level of $5.15 for more than 9 years. During those 9 years, Members of this Senate have voted seven times to raise their salaries. Yet for those at the bottom, we don't have the time to bring a minimum wage increase bill to the floor of the Senate.

If we can keep this up, the approval of Congress will go into the negatives. At least it is in the positives now. It is maybe 10 or 12 percent. If that happens, it will be the first time in history that it will be in the negatives. I don't blame the American people for having that opinion of Congress.

Last month, we learned that some 26 million Americans—most veterans—had personal information stolen, including names, birth dates, Social Security numbers. This puts every one of these veterans in jeopardy of identity theft and fraud. Why are we not this week bringing to the floor the urgently needed Veterans Identity Protection Act? This bill would require the Department of Veterans Affairs to provide 1 year of credit monitoring to each affected person and one additional free credit report each year for the following 2 years. This bill would make a real difference for millions of veterans. Why is it being ignored? It seems to have bipartisan support. Why is it not being hotlined, as they say around here, for immediate consideration on the floor? We should bring it up this week. We should be debating that today. I guess we don't have time for that.

One other matter. I don't think we have a higher priority right now in terms of our national economy and our national well-being than ending our addiction to foreign oil. Senator LUGAR, a Republican, and I have a bill that would dramatically ramp up ethanol and biodiesel production. It would make these home-grown fuels available and usable at the pump and in communities all across the United States. Our national security is at stake. Why isn't this bill being brought to the floor on an expedited basis this week?

The answer, Mr. President, is that we are not addressing the real concerns and priorities of the American people because the majority leader—and I assume his party—are putting their own narrow special interest priorities first. Apparently, it is more important to cater to a narrow vocal base of the Republican Party than to listen to the broad majority of the American people.

It boggles the mind that the Republicans have once again brought the so-called Federal marriage amendment to the floor. It will fail this week for the same reason it failed the last time. It is because deep down inside we all know it is wrong. It is just basically wrong.

Yesterday, the distinguished chairman of the Judiciary Committee, Senator SPECTER, said this amendment is ''a solution in search of a problem.'' He is exactly right. For more than two centuries, our States have done an excellent job of making their own laws governing marriage without Federal interference. The last time the Senate debated this amendment, the cloture vote on the motion to proceed garnered only 48 votes—12 votes short of the 60 needed to invoke cloture, and far short of the 67 votes needed to pass a constitutional amendment. You have to have 67 votes. There isn't one person here who thinks they are even close to that. They cannot even get a majority. It is not surprising.

The amendment tramples on the authority of each State to regulate the civil laws of marriage within its borders—authority, by the way, I point out, that the Congress strengthened by passing the Defense of Marriage Act, which prevents any State from being forced or required to recognize a same-sex marriage in another State. Wait a minute. The Congress passed a law saying that we, the Federal Government, cannot require a State to recognize a contractual agreement in another State dealing with same-sex marriage. Well, guess what. No State has been forced to recognize a same-sex marriage or civil union joined in another State.

Yet now the Republicans would have us force upon each State a constitutional amendment that would take away the right of those States to enact their own contractual laws. It seems to me that what is happening is we are going down a road rapidly of more and more power to the President of the United States, less and less power to the Congress and the courts, more and more power to the Federal Government under a President.

The last time I looked, that could have been called something like a monarchy. Come to think of it, that is what we overthrew a couple hundred years ago. Most people tend to forget that when we declared our independence from Great Britain and fought the Revolutionary War and established our Constitution, England had a Parliament. But guess what. The King reigned supreme. It was King George at that time. So we recognized that. We recognized the inherent inability of the Parliament in England to go up against the King. So when we devised our Constitution, that is why we had the separation of powers—the courts, the Congress, and the President, all separate

and equal. Then we reserved to the States certain powers not enumerated in the Constitution. One of the powers is the right to set contractual laws. Now this Republican Congress wants to take that away. It is almost like we are going full circle back to the monarchy of Great Britain—a Congress that lays prone before the President—a President that is able to tap your phones, read your e-mails under some guise of a power that, since we are at war, he can do whatever he wants, taking away our civil rights and liberties. What does Congress do? Nothing. We sit back and let it go on. Now we are going to take another step to take away power from the States.

Well, again, this is something that is inherently wrong. It is wrong to take away this power from the States, take away the authority to set up their own contractual framework. As Senator KENNEDY said, I think eloquently, a few moments ago, it should be the right of every religion, under the freedom of religion, to decide the sacramental laws of marriage as defined by that religion. But when it comes to the contractual right, the civil right, that is determined by the State. That is why when you go to get married, you do two things—find a minister, a rabbi, a priest, whatever, but then you have to go to the courthouse of your State and get a license. Why? Because you are entering a contractual relationship. That is what this amendment would take away. Again, I would defend to the death the right of a religion to determine its own sacramental laws of what it determines a marriage to be, but also defend the right of a State to set up its own contractual laws within and under the umbrella of equal rights for all and nondiscrimination under the Constitution of the United States.

Senator KENNEDY referred to it, and I will refer to it again. It wasn't too long ago where people of different races could not get married in this country. States had laws that said a Black person could not marry a White American, or an Oriental could not marry a Black or a White. You could not marry someone of another race. It is not too long ago in my own lifetime, but that was true.

Discrimination is what it was. The courts struck it down. Would these same Republicans who keep coming here saying the courts should not be interfering in this say the courts should not have interfered there, too; that we should have left those discriminatory laws intact under the Constitution of the United States?

I keep hearing all this stuff about protecting the American family. I submit to my friends on the other side, if they really want to do that, how about raising the minimum wage? That would do more to protect the American family than anything they are talking about here.

How about addressing the skyrocketing health care costs? How about the high cost of gasoline? If they want to defend the American family, how about giving access to health insurance to 45 million people a day who can't afford it? If they want to defend the American family, how about doing something about the rising cost of college tuition in this country and helping low and moderate families meet those costs of college education? In other words, if Majority Leader FRIST and his party want to protect the American family, why don't they deal with the real challenges confronting families instead of wasting the Senate's time on this cynical, trumped-up issue of same-sex marriage? Why can't we make bipartisan progress on issues such as providing access to health insurance and raising the minimum wage?

I close by making one point very clear: If the Democrats were in charge of the Senate, if we were setting the agenda, we would be charting a different course for our Nation. We would not be wasting the Senate's time on divisive, partisan constitutional amendments which seek to divide our people, pit families one against another, pit Americans one against another by dividing us. We would not be passing yet another mammoth tax cut for the wealthiest in our society called the estate tax, a tax we can't afford for people who don't need it.

If we could set the agenda, we would have the minimum wage issue out here. We would have a health care issue out here. We would have issues out here that provide for families getting a college education for their kids. We would have bills on the floor addressing the addiction to oil and moving us to more energy independence.

Every day it is becoming clearer and clearer to the American people that they face a choice: We can stay the current course—more divisiveness, more deficits, more debt, more drift—or a new direction for our country. If the majority party wants to continue to squander our time and taxpayers' money, as they are doing this week, well, that is their choice. But the American people get to choose, too. The American people are eager to cut out this divisiveness, to move on to the real agenda that confronts our country, to move in a very different direction, and I say it is time to do that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. How much time remains on our side?

The PRESIDING OFFICER. Twelve minutes.

Mrs. MURRAY. Mr. President, last week our country celebrated a very important event—Memorial Day. Every Member of the Senate went home to services where we heard about the sacrifices of men and women who served in conflicts throughout this Nation's history, most recently in Iraq and Afghanistan where we have now lost close to 2,500 of our Nation's best and brightest.

I listened to those speeches, and I heard about the sacrifices these men and women have made. I heard the rhetoric about making sure we take care of their families, making sure we take care of those who are wounded when they come home, making sure we have the ability to care for those we ask to serve this country so honorably as we celebrated Memorial Day last week. I went throughout my State. I listened to people wanting to make sure we did not forget those people who served us. I came back to the Senate last night confident that we should be talking about those issues.

It is deeply disconcerting to me that we are not talking about the war in Iraq or Afghanistan, we are not talking about the sacrifices our soldiers have made, we are not talking about the tremendous responsibility we have as the Senate and Congress to make sure we have the funds for those men and women who have served us, both while they are overseas and when they come home. We are here instead on a completely different priority, and I have to ask the question of this Senate: Why are we spending time on political games when we have soldiers in harm's way who are serving us honorably around the world? Don't they deserve better than this? Why is the Senate bringing up divisive issues when we need right now more than ever to come together as a country and address the challenges that confront us? Maybe it is because those people who are in charge, those people who make a decision about what issues we discuss here, just have the wrong priorities. And I see the wrong priorities being debated in the Senate not just for this week but for apparently the coming weeks.

Last week, I traveled through communities in my home State of Washington. Everywhere I went, I heard a growing anger and frustration that American troops are being wounded and dying in Iraq, and my constituents want to know why. They want to know where we are going. They want to know what they are doing. They want to know why we are there. They want to know what will make us successful and how we can bring our troops home successfully. But here we are in Washington, DC, where the Bush administration doesn't have a plan they have outlined for success, and here we are in Congress not demanding answers.

My constituents are very frustrated, and they have good reason to be so. They, like all of us, are watching what is happening in Iraq on their TVs every night. They see personally what these deployments are doing to their communities at home, their friends, their neighbors, their coworkers, being called up not just once but twice, three times, to head to Iraq and come back. They see the terrible consequences for families who are left behind, and they see these veterans, when they go to get the treatment they need, being told they have to wait in line because we haven't adequately funded our Veterans' Administration.

And by the way, many of these same veterans just in the last week were told

that because of lack of oversight at the VA, 26.5 million of these veterans who served our country honorably have now lost their identities, and we are not dealing with that in the Senate right now? How are we going to make sure every one of these veterans gets the care they need, and how are we going to make sure now that 26.5 million veterans get the help they need as their identities have been stolen? That is going to cost money. It is not free. We have a responsibility to help every single one of them. They should not be treated like this as veterans in the United States today.

I see what these deployments are doing in our communities, just as my constituents do, and they see the challenges these veterans are facing when they come home and their families while they are deployed. They don't see a plan about how we are going forward in Iraq today. And what they importantly don't see is us in Congress on the Senate floor standing up and talking about what is going on, demanding answers from the Bush administration and the Pentagon.

We can only make the good decisions about how we go forward if we have a discussion in the Senate about what is happening on the ground, what the impacts are, what our choices are, how we can help both the Pentagon and the Bush administration and our constituents make a good decision about whether our troops should come home or whether they should stay or what is happening. We need to demand answers in the Senate from this administration and the Pentagon about what is happening on the ground. That is the discussion I wish we were having in the Senate today. That has meaning to every single one of my constituents. They want to know what we are doing, where we are going, how we are going to pay for it, and how we can be successful so we can know when our troops are coming home.

I have watched now for 3 years as our soldiers went to war in Iraq, and at every possible juncture in this war, the Bush administration has chosen the wrong path. When they were advised to build a stronger multinational coalition, they decided to go it alone. When the Army's Chief of Staff said it would take several hundred thousand troops to stabilize Iraq after the war, they ignored his advice and they fired him. When sectarian violence started boiling over and undermining the stability of Iraq and the safety of our troops, they pronounced the insurgency was in its last throes. Well, they were wrong.

We can't continue to watch what is happening in Iraq without answering questions in the Senate. For too long, we have watched decisions being made that have sent us in the wrong direction, and for too long, I say to my colleagues in the Senate, we have given them a pass on these monumental failures, and that has to change.

Families I represent want Congress to demand accountability, and they want us to get to the bottom of this. But that is not what they are getting here. Instead, we see the Republican leadership playing politics with debates on gay marriage and flag burning. What are we not doing while we spend our time on this issue? We are not having hearings on Iraq. We are not having discussions about what is happening on the ground. We are not hearing from our generals so that we can make good decisions about when and how our troops can come home successfully. Instead, we are seeing political distractions that are simply meant to divide our country at a time when we ought to be together, Republicans and Democrats, having serious discussions about what we can do as leaders of this Nation to bring us success, if it is possible, in Iraq.

Back home, people want us to talk about Iraq. They want answers. But in the Senate, the Iraq war is the proverbial elephant in the room. It is right there, everyone can see it, but no one talks about it. No one talks about it in the Senate of America. No one is talking about the Iraq war. I will tell my colleagues, we are not going to get better results in Iraq if we ignore it in Congress.

In all the time I have served in the Senate, I believe this is the weakest oversight I have ever seen from a Congress during military conflict. We were not sent here to just rubberstamp this administration or any administration. I served under the Clinton administration during the war in Bosnia when we required generals to come up here almost on a daily basis, to obtain answers from them about what was happening on the ground, how we were proceeding forward, what we needed to do; and yes, at the time, there were calls to bring our troops home, no boots on the ground, all the different points we are hearing today, but we at least had generals in front of us so we could ask questions and go home and respond to our constituents and feel confident in whatever decision we made in how we were to move forward.

We were sent here as Senators to develop policy to help our country move forward. And in this time, this place, this war, I can't think of a more important time that as Republicans and Democrats we should sit down together and put our cards on the table and say: How should we move forward and how can we do it safely and how can we do it effectively? Yet here we are in the Senate talking about gay marriage and flag burning. We are not talking about a conflict that has consumed our Nation, that has sent our youngest, best, and brightest to a war where we have almost 2,500 military families that have suffered the loss of a loved one, where we have thousands and thousands of young men and women who have lost limbs, have had head injuries, and are now being serviced in our veterans hospitals for years to come, and yet we haven't talked about how we are going to pay for that.

There is a huge disconnect between the families at home and what is happening on the Senate floor. There is no surprise they are frustrated and angry and demanding answers. They are surprised and shocked that we are talking about gay marriage and flag burning because the discussion they have at their dinner tables when they are home at night is what is happening in our world; how can we protect our children; how can we make sure our families are safe; how can we make sure our loved ones who are serving us overseas are protected while they are there; how can we make sure we win a war in Iraq, if that is possible; how can we make sure that those people we send to serve us overseas have the services they need when they come home.

I was shocked to see an article in the ''Psychiatric News'' just a few weeks ago that says our veterans are not getting the help they need for mental health care and substance abuse. I wish to quote Frances Murphy, M.D., Under Secretary for Health Policy Coordination at our Department of Veterans Affairs, who said that the growing number of veterans seeking mental health care has put emphasis on areas in which improvement is needed, and she noted that some VA clinics do not provide mental health or substance abuse care, or if they do——

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. MURRAY. Mr. President, I ask for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. She says, ''waiting lists render that care virtually inaccessible.''

Our soldiers who are serving in a 24/7 war in Iraq deserve to have mental health care when they come home. They are not getting it today, and the Senate is not dealing with that issue. I think we can do a lot better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I wanted to spend a few minutes here to respond to the allegations made on the other side of the aisle that the protection of marriage is not important enough for the U.S. Senate to take a day or two to debate and then to vote on a constitutional amendment. I really am astonished to hear our friends on the other side of the aisle take that position because, frankly, I think the American people disagree with them and agree that marriage is important. I think they agree that when it comes to social experimentation by our courts, by a handful of activist judges who think they know better than the American people what is good for us, that they want that kind of experimentation to stop unless, of course, it is authorized by a vote of we, the people, rather than imposed upon us from on high by judges. This kind of experimentation when it comes to living arrangements and now with the institution of

marriage are not without costs, and, most often, the individuals who pay the price for that kind of experimentation are America's children.

I just can't disagree more with our colleagues on the other side of the aisle who seem to think that the preservation of our society's most basic institution—the institution of marriage—isn't important enough for our time and it is not important enough to take the time to discuss this issue and talk about what the solution might be to preserve the power of we, the people, to determine the laws and policies that affect our lives, and certainly the next generation of our children. I think this time is important, this issue is important, and we will find out when we vote on this issue who it is that believes that the American people should make these sorts of decisions and not a handful of activist judges such as occurred in Massachusetts, and now with a decision out of the Federal court in Nebraska holding that State's constitutional provision that limits marriage to one man and one woman unconstitutional under the Federal Constitution.

I don't know who it was that woke up 200 years or more after the Constitution was written and decided that the Founding Fathers wrote into the Constitution discrimination when it comes to marriage between one man and one woman. Obviously this is an issue that we have not initiated, we haven't brought up, but this is a fight that has been brought to us, those of us who believe it is important to preserve traditional marriage.

Mr. President, I would ask if I might be notified after 15 minutes of our 30-minute allotment has been used.

The PRESIDING OFFICER (Mr. ALLEN). The Chair will so advise.

Mr. CORNYN. Mr. President, I would also like to spend just a few minutes examining what our colleagues on the other side of the aisle have said. For example, this morning our Democratic leader has said that Nevada has the third highest gas prices in the whole country, and he says that taking care of gas prices is more important than preserving marriage between a man and a woman. But I would like to point out that it is because of obstruction on the other side of the aisle that we have been unable to address the importance of access to domestic production of oil and gas in this country. And, because of obstruction on the other side of the aisle, we have been unable to create new refinery capacity that would make more gasoline, increase the supply and necessarily then, under the economic laws, bring down the price. It has been because of the obstruction that we have seen on the other side of the aisle that we have been unable to address that issue. Again, another example of block and blame.

Then we are told that somehow we should be talking about solving the health care needs of the American people. It was just a few weeks ago when our colleagues on the other side of the aisle denied sufficient votes to allow us to consider a small business comprehensive health plan brought up by the Senator from Wyoming, Mr. ENZI. If our friends on the other side of the aisle were serious about solving America's health care problems and providing greater access to health insurance, they wouldn't have voted against that bill just a few short weeks ago. Yet, now they want to change the subject, saying we shouldn't be talking about marriage; we should be talking about health care. The fact is they are the ones who blocked our ability to proceed on that important issue and to find a real solution to that problem. But again, it is an instance of block and blame.

Then the Democratic leader this morning said, we ought to be doing something about health care costs. We tried to bring up the issue of health care costs earlier as well, in a case where we have said there ought to be some reasonable limits on noneconomic damages in medical liability cases. That has been tried in my State, the State of Texas, and we have seen medical liability insurance go down into the double-digit range. We have seen more doctors coming into communities where they have been afraid to practice, and we have seen greater access to health care as a result of those efforts. Yet when we tried to change that here in the U.S. Senate, again, we were blocked by our colleagues on the other side of the aisle and then blamed when we are debating about the preservation of the institution of marriage and not addressing medical costs by dealing with the medical liability crisis.

Of course, then they also claim that really they ought to be the ones to control the legislative agenda, and that is really what this is all about. But they mentioned the war in Iraq, the energy crisis, the price of gasoline, health care, and said that the priorities of the Republican leadership are misplaced when it comes to addressing America's real needs, but neglecting all the while in pointing out that they themselves are the ones who are the primary reasons why we have been unsuccessful in addressing some critical improvements and reforms in those areas.

Our colleagues on the other side of the aisle need to make up their minds. They are literally schizophrenic—of two minds—when it comes to what to do about our energy crisis in America. They blocked building new refineries; they held up an energy bill for 3 years; they blocked exploration for domestic production in the Arctic National Wildlife Refuge, which we know, given modern exploration and drilling techniques, can be done in an environmentally friendly sort of way; and they blocked the President's Clear Skies initiative, which is designed to cut down on emissions and protect the environment.

Rather than demagog the issue, rather than to try and pin blame on the President or the Republican leadership, our colleagues on the other side of the aisle would be better served, and certainly the American people would be better served, by working with this side of the aisle in trying to find real solutions, particularly when it comes to our energy needs, to reduce America's dependence on foreign sources of energy and help reduce gas prices. If they are really concerned about energy costs, then they would have made it easier by working together with us to expand clean nuclear energy.

On the issue of the marriage amendment, the Democratic leader this morning said this is an issue that ought to be left to the States. Certainly many States, including my State, have passed a constitutional amendment protecting traditional marriage. The problem is some Federal courts, notably one in Nebraska most recently, held that very State solution is itself in violation of the Federal Constitution.

The Democratic leader is a distinguished lawyer in his own right. He understands that a Federal court which holds that the Federal Constitution violates the State Constitution, that the Federal decision preempts the State constitutional solution. So again, this is not an issue that we have gratuitously brought up; this is one that has been forced upon us. I think what our colleagues on the other side of the aisle would prefer is if we would just be quiet and gradually allow the Constitution of the United States to be amended, but not as it turns out by the American people by voting on a constitutional amendment, but rather by a handful of activist judges who have somehow taken it upon themselves to define what is good for us and in fact what is and is not unlawful discrimination when it comes to our traditional marriage laws.

We know what happens when the American people have a chance to vote on these issues. Overwhelmingly, they vote in favor of preserving traditional marriage because instinctively they know it is the best solution for our society and certainly in the best interests of our children. We have seen too many of our children suffer as a result of social experimentation, certainly by the courts, and we ought to make sure that we preserve the right for we, the people, to make those important decisions rather than allow them to be made by judges who would amend the Constitution themselves under the guise of interpreting the Constitution. How is it that someone can decide after 200 years or more that the U.S. Constitution or even a State constitution modeled after the U.S. Constitution would result in a decision that traditional marriage laws are somehow discrimination is really just beyond me.

As I said yesterday on this floor, it is almost surreal. It is almost as if we have been asked to voluntarily suspend our powers of disbelief. The American people know what we are talking about

is important. They know what we are talking about here in terms of preserving marriage and a better future for our children is fundamental to our way of life. It is not frivolous. It is not politics. It is absolutely essential that we do so. They try to raise red herrings like: Well, we ought to be talking about health care, or we ought to be talking about the energy crisis, or we ought to be talking about the medical liability crisis, when the truth is they blocked every opportunity we have had recently to try to do something about those issues. The truth is what they want to do is to try to score political points rather than solve the very real problems that confront our Nation.

Finally, let me just add that recently I know the Democratic leadership in the other House criticized—if you can believe this—criticized the performance of the economy. Are they really complaining that 75,000 new jobs last month, not to mention 33 consecutive months of job gains and more than 5.3 million new jobs created since August of 2003, is the wrong direction for this country? The fact is the economy is doing well. But we need to continue to try to make sure that America remains competitive in a global economy by making sure that we keep taxes as low as possible, and by making sure that we keep our regulatory environment one that can protect us but, at the same time, not kill good business opportunities and job creation in this country. We need to look at our litigation system and make sure that we are not imposing a litigation tax on the American consumer and making it harder for legitimate employers to create those jobs. We need to make sure that we continue to try to work together to solve the very real problems that confront our Nation.

I don't apologize for a minute in saying that I believe we should vote on a constitutional amendment to protect traditional marriage. I don't think it is a waste of time. I think we can spend a day or two talking about this issue and its impact on our children and on the next generation. I think that is as weighty an issue as we will ever consider here, because it may well determine the long-term direction of our society and the welfare certainly of the next generation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I ask unanimous consent I be recognized for 5 minutes to speak on the issue of S.J. Res. 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MARTINEZ. Mr. President, I am pleased to follow the distinguished Senator from Texas in talking about this issue that is very important to the American people. I, like he, believe that it is a bit of a ''dodge and weave'' to suggest we should not be talking about this. It is much easier to talk about all the things that maybe we ought to be talking about, things that we have talked about in the weeks past and will be talking about in weeks to come, but let's not talk about this one because it is too hard. It is easier to have a collateral way of looking at it by saying: Oh, gosh, we should not talk about this because frankly we would just as soon not debate or discuss the merits of what is before us.

S.J. Res. 1 is rather simple. Today is one of those days when we can actually read what it is we are debating. This is all we would add to the U.S. Constitution, this is all it would say, if this amendment to the Constitution were to be approved. It says:

> Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

To suggest that is not an important issue for our Nation, to suggest that somehow that is some out-of-the-mainstream language, to suggest that is only from some sect or far extreme point of view—to so characterize what I believe is the mainstream of American thought is simply not to be dealing with this subject truthfully.

A number of States have already spoken on this matter through their elected officials, but activist judges have interpreted both the Federal Constitution and the State constitutions very broadly. They have done this in order to overturn the will of the people regarding same-sex marriage. That is the reason we have to act. The Constitution has been improperly interpreted to impose same-sex marriage on the people of the United States.

As the Senator from Texas said, the fact is, it is the action of judges that have precipitated the need for us to be discussing this issue in the Senate today. It is the activism of some judges, who have taken away the right of State constitutions to be amended to include this very simple language, that has brought us to this moment. The Constitution has been improperly interpreted to impose same-sex marriage on the people of the United States. It is proper for the people to continue to speak on this issue through their elected officials by amending the Constitution to ensure that the sanctity of marriage will be protected from these activist courts.

Marriage, as defined as this amendment would define it, as between a man and a woman, hardly needs to be suggested as the most basic institution of society throughout history. It is foundational to the structure of what we know leads to the successful family, to the raising of children. Our traditional and religious understanding of marriage is under attack by those who wish to redefine the meaning of marriage and family. That is what is at stake, whether in fact the traditional view of family and marriage will prevail or whether, through the acts of judicial activism, we will redefine it to something other than that.

They have sought to go to the courts to overturn properly enacted State laws or constitutional amendments defining marriage as between a man and a woman. Only through bypassing democratically elected legislatures and the rule of law can same-sex marriage advocates enact their vision of American society.

The only way to prevent marriage from being redefined by activist courts is to pass a constitutional amendment that clearly establishes the will of the people on this foundational issue for our society.

I also want to address the concerns expressed by some regarding federalism. It is true that in our Federal Republic, in our system, the regulation of marriage has traditionally been left to State governments. Based on this principle of federalism, the States have been free to enact family policies that have allowed experimentation and reflect the different values that Americans have in each of their respective States.

While federalism is a general principle that promotes liberty within our Republic, we also have the overriding fundamental principle of American Government that governments derive their just powers from the consent of the governed. An essential element of republican government is that those who are subject to law also determine the law by which they are governed.

The recent strain of judicial decisions and cases on the part of same-sex marriage proponents, however, not only threatens the institution of marriage but denies the people of the individual States the freedom to define their own basic legal and social institutions.

I believe this marriage amendment takes a measured and reasonable approach to the problem of courts redefining marriage. It prohibits same-sex marriage in the United States while preserving the concept of federalism by leaving to the States the authority to enact State laws regarding legal benefits to unmarried, including same-sex couples.

Our judiciary is respected throughout the world, and I believe that is because our judges for the most part have been above politics and have always been committed to the rule of law. When our courts enact their political will over the proper policy decisions of legislatures, such respect is in jeopardy. A judge's personal political views have absolutely no place in performing their judicial role in our constitutional structure. Rather, the Constitution, statutes and controlling prior decisions as applied to the facts of the case at hand are the sole basis for judicial determination.

Therefore, today I urge my colleagues to adopt this amendment and give control of the foundational institutions of marriage back to the people of our country where it rightfully belongs.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, a couple of my colleagues have spoken in favor of the constitutional amendment that is up today. They have given eloquent statements. We have others who are coming.

What I wanted to do while we wait on additional Members who are coming over to the floor is cover a couple of points I believe have been touched upon, but I think they deserve emphasis. I appreciate my colleagues on the other side of the aisle raising a number of issues that they are saying we are not dealing with. I urge them to vote for cloture on these issues when they come up because we will bring these issues up—on the budget; the supplemental is in a conference; we will have an Energy bill that is going to be coming up. I hope they will vote for cloture to go to that Energy bill so we can actually get it up to vote on it on the floor.

I know a number of them are supportive of the Native Hawaiian issue and are complaining because these issues are not in the top 20 issues in the United States, of the people's concern. Yet they are not raising the Native Hawaiian issue which will come up this week as well. I urge them to vote against that if they think it is not a high-priority issue.

I do think there is some speaking out of both sides of the mouth when you raise all these issues we should be covering and then vote against cloture, preventing us from covering those issues, and then complain about a marriage amendment that they are saying doesn't rise to the level of interest in the United States.

I think it is of a high interest in the United States or you wouldn't have seen all these States that covered it.

There is another issue that has been covered some. I hope we can address that issue. It is the issue of religious freedom. If you do not define marriage as the union of a man and a woman, but define it to require that you have to recognize same-sex unions, that is the basis—one of the bases on which Catholic Charities was driven out of the adoption business in Boston. They were required by law to do something against the tenets of their faith. I hope that can be developed some a little later on.

My colleague from Missouri is here. He is one of the strong supporters of this amendment. I yield the floor to the Senator from Missouri, Senator TALENT.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. TALENT. Mr. President, I want to take a few moments today to speak in favor of the Marriage Protection Amendment. This is an important measure, and the people are entitled to see who in this body is for protecting traditional marriage and who is not, because nothing less than that is at stake.

Some courts in this country are engaged in a process by which they are going to force the people, whether they like it or not, to accept a fundamental change in the basic building block of our society. I think that is wrong; under our constitutional process the people shouldn't accept that and don't have to and that's why this amendment is here before us.

Marriage is our oldest social institution. It is older than our system of property. It is older than our system of justice. It certainly predates our political institutions and our Constitution. And marriage may be the most important of all these institutions because it represents the accumulated wisdom of literally hundreds of generations over thousands of years about how best to lay the foundation of a home in which we can raise and socialize our children.

Now it isn't always possible to raise children through marriage, and certainly single parents around this country do heroic jobs nurturing children in difficult circumstances. We should give them credit and certainly we should give them as much help as we can. One of the ways we can do that is by affirming the social standard in favor of traditional marriage, which helps create a climate within our culture of stability and order for our children.

The social scientists have figured this out too. As a result of decades of accumulated data, family scientists from the fields of sociology, psychology and economics, have concluded children and adults on average experience the highest level of overall well-being in the context of healthy marital relationships.

We know what happens when societies abandon the model of traditional marriage. The Scandinavian countries legalized same-sex marriage years ago, and the result is that fewer and fewer people in those countries get married at all, and more and more children are born out of wedlock. That is not a good thing for their children. In short, the minimum we can say is that the evidence is not even close to showing that we can feel comfortable making a fundamental change in how we define marriage so as to include same-sex marriage within the definition.

The other issue at stake is who should decide these questions. The first and most basic right which our people possess is the right to govern themselves.

The Framers thought that right was self-evident. It means that the only just government is the one that derives its powers from the consent of the governed. That means that every act of any governmental body has to be the result of a process in which the people have, at some time, consented.

Despite this right, some judges have decided to attempt to change the definition of marriage without reference to the will of the people.

Right now, nine States face lawsuits challenging traditional marriage laws—California, Connecticut, Iowa, Maryland, Nebraska, New Jersey, New York, Oklahoma, and Washington. In four of those States—California, Maryland, New York, and Washington—trial courts have found a right to same-sex marriage in State constitutional provisions—in each case relying in part on the Massachusetts decision. State supreme courts are expected to decide appeals of those decisions in 2006 or 2007.

And in Nebraska, a Federal district court in 2005 found unconstitutional a State constitutional amendment passed by 70 percent of Nebraska voters.

In short, it is clear that there is a well organized and deliberate movement in this country to redefine marriage—to change our most fundamental social institution—without regard to the right of our people to govern themselves.

Unless we pass a constitutional amendment, we will allow the courts of this country to disenfranchise tens of millions of Americans on an issue that is of greater importance to them on a day-to-day basis because it involves the way in which their children and other people's children are going to be raised than most of the legislation we debate here.

If we cannot agree in this Senate on anything else, we should be able to agree on this: Everyone should have the right to advance their point of view in the legislative process on this issue; and we can trust the good sense of the American people to produce the right result in the end.

The only way we can do that is by passing a constitutional amendment. That is what this debate is about. That is why I will be supporting the amendment before the Senate.

I yield the floor.

Mr. BROWNBACK. How much time remains on our side?

The PRESIDING OFFICER. Fifteen seconds remains on the side of the Senator from Kansas.

Mr. BROWNBACK. Mr. President, I appreciate my colleague from Missouri putting this forward. We will have further debate this evening from 6 to 6:30, and hopefully some a little later on.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I rise today to oppose the Marriage Protection Amendment to the Constitution. It is my fundamental belief that

the Constitution is not a document that denies rights. As a matter of fact, it is a document that protects those rights once earned.

With all the problems in the world today, the Senate is spending valuable time debating a bill which we know does not have the votes for cloture, which is divisive and which I believe does not belong on the national agenda.

The fact is, all family law has historically been relegated to the States; that is, marriage, divorce, adoption, custody, all aspects of family law and domestic relations have been the province of the States. That is what the Supreme Court has said in case after case from In Re Burrus in 1890 to Rose v. Rose in 1982. In that 1982 case, the court affirmed the holding of In Re Burrus that:

[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.

Similarly, in Sosna v. Illinois, in 1975 the Supreme Court wrote:

Domestic relations [is] an area that has long been regarded as a virtually exclusive province of the States.

In 1982, then Associate Justice Rehnquist, dissenting in Santosky v. Kramer, wrote:

The area of domestic relations . . . has been left to the States from time immemorial, and not without good reason.

And just this past November, in a television interview, Justice Stephen Breyer stated very simply:

Family law is State law.

It is clear domestic relations have been the jurisdiction of States. That is where they should remain.

I deeply believe this Senate should not be involved in putting amendments in the Constitution dealing with any aspect of marriage, of divorce, of families, of adoption, of any of those areas. The States reign supreme.

Why is it when Republicans are all for reducing the Federal Government's impact on people's lives, until it comes to the stinging litmus test issues—from gay marriage or end of life—they suddenly want the Federal Government to intervene?

For the life of me, I don't understand why this keeps coming before this Senate. It is extraordinarily difficult to pass a constitutional amendment. We all know that. Both Houses have to pass it by a two-thirds vote, and then over a 7-year period it goes out to the States where it has to be ratified by three-quarters of the States. The last constitutional amendment that went on to be ratified by the States was the Equal Rights Amendment, a simple 25-word amendment that said:

Equal rights under the law shall not be abridged based on sex.

Guess what. They were not able to get the necessary three-quarters of the States over a 7-year period.

So I don't believe this constitutional amendment would be successful even if passed out of this Senate. I have not seen one passed in 13 years. It is extraordinarily difficult to get one ratified.

Family law is, indeed, the purview of the States, so there is no need for a constitutional amendment. This proposed constitutional amendment strikes at the heart of States rights in the area of family law and, in doing so, it actually undermines our Constitution. Moreover, I believe Americans believe the States should deal with same-sex marriage as the States see fit. And so do I.

Americans are especially concerned about amending this Constitution if it means closing the door on civil unions.

Why do I say this? How do I know this? Mr. President, 53 percent of Americans polled recently would oppose a constitutional amendment that also bans civil unions and domestic partnerships such as we have established in California. Many legal experts believe this amendment would do just that. The language in the second sentence of the amendment is ambiguous. It is ambiguous, at best, stating that:

Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

Now, some on the other side have argued that the amendment would still allow for legal unions passed by State legislatures, not just those instituted by the courts. However, when similar amendments were passed in States such as Michigan, Ohio, and Utah, domestic violence law and health care plans for couples, both gay and straight, were taken away. So we know it has an effect.

I believe to put this on the Constitution, if it were to prevail, if it were to be ratified by three-quarters of the States, it is very likely all domestic partnerships and domestic unions of any civil kind would be wiped out, as well. That does not make any sense at all.

States are well able to handle the issue of marriage on their own without the heavy hand of the Federal Government intervening in people's private lives.

What is currently happening in States indicates to me they are, in fact, actively engaged on this issue. The numbers speak for themselves. To date, 45 States have acted to restrict marriage to only one man and one woman; 18 of those have done so by amending their State constitutions. So why are we doing this?

This year, seven more states are poised to join them when they hold statewide votes on a constitutional same-sex marriage ban: Alabama in June, and Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin in November. In addition, at least nine other States may take up similar amendments in the not-so-distant future: Arizona, Colorado, Delaware, Illinois, Indiana, Massachusetts, Minnesota, New Jersey, and Pennsylvania. In fact, only one State, Massachusetts, recognizes same-sex marriage. One State, that is it.

So why all the fuss? Why is the Senate devoting its time to this issue when one State has taken action? I say based on the laws of this land that is the prerogative of that State or any other State. So there is no need to be considering a Federal constitutional amendment, particularly when we have important global and national problems to address.

We have an enormous deficit in this country. We do not spend much time on it.

In Iraq, things are going from bad to worse. Just this morning we read about an unrelenting kidnapping campaign happening in the streets of Baghdad. Thousands of Iraqi citizens are being snatched from the streets, 56 just yesterday, all rounded up by gunmen dressed in Iraqi uniforms.

North Korea has announced it possesses nuclear weapons. Iran is trying to become a nuclear power. Stem cell research, passed by the House a year ago, still is not on the floor of the Senate.

Why, why, why, are we doing this now when we could be doing stem cell research, when we could possibly provide the hope for juvenile diabetes, for Alzheimer's victims, for cancer victims, for spinal cord severance victims?

As to appropriations, the Senate has not taken up and approved any of the 12 appropriations bills that it must complete by the end of the session, and it is already June.

I cannot understand why we are doing this. We have the defense authorization and intelligence authorization bills. These are critical bills at a time when our Nation continues to be fighting in Iraq, Afghanistan, and the global war of terror, and we have not passed these bills.

Gas prices. When I was in Los Angeles last week, it cost more than $3.50 a gallon to fill up a tank of gas. We have not taken steps to deal with that.

There are dozens of critical issues, including the mandatory business of this Senate in 2 major authorization bills and 12 major appropriations bills that we have not addressed, and 45 States have taken action. Yet this Senate seems pressed to defend the Nation, to amend the Constitution, to provide something which is within the purview of the States and which the States are handling.

To me, it makes no sense other than this is an election year. It makes no sense other than throwing red meat to a certain constituency. It certainly is not what the Constitution of the United States is all about.

I hope we will vote no on cloture. I hope we will return to business that is important to the American people. I do not believe this issue merits the time of this Senate at this time.

Mr. LEAHY. Mr. President, as I listen to the debate over this constitutional amendment, I am struck by the

circular and contradictory arguments offered by some supporters of this measure. It is clear even to a casual listener that the arguments from some proponents of this effort to use the Constitution to restrict individual freedom for the first time ever actually make the case for why there is no necessity for it. They must acknowledge that the Federal Defense of Marriage Act remains on the books and has been upheld by every Federal court that has considered it, including the Ninth Circuit Court of Appeals. Their talking points proclaim that 45 States already passed legislation or contain provisions in their State constitutions that define marriage as a union between a man and a woman. They point out that 19 States have in the last 10 years passed referendums to amend their State constitutions and that decisive majorities approved a definition of marriage. These arguments beg the question as to why we are spending several days of a waning session on an amendment that is not only divisive but also unnecessary.

To propose a constitutional amendment, two-thirds of each House of Congress must ''deem it necessary.'' That is the constitutional standard for proposing a constitutional amendment. How, in light of this record, could Senators who value individual liberty, respect the States, and understand the Constitution vote any way other than against proceeding to this measure?

The Constitution is not some all-purpose bulletin board on which to hang political posters or to post bumper stickers. Our Constitution is the foundation of our rights and freedoms. The Bill of Rights, the first 10 amendments to the Constitution, were adopted to ensure limits on the Government and to protect the liberties of Americans. Vermont did not and would not become a State until 1791, the year the Bill of Rights was ratified. The structure of the Constitution, with its separation of powers and checks and balances, was designed by the Founders to protect our rights.

Sadly, the Bush-Cheney administration, with the acquiescence of a Republican Congress, has done much to remove those protections to the detriment of the rights of all Americans. In this regard, I note the recent report of the CATO Institute entitled, ''Power Surge: The Constitutional Record of George W. Bush.'' This report criticizes this administration for not upholding the text, history, and structure of the Constitution and recognizing the limits on Presidential power.

As congressional Republicans have returned time and again to use constitutional amendments as election year rallying cries to excite the passions of some voters, those in Congress who respect the Constitution and honor our oath of office to ''support and defend the Constitution of the United States'' are cast in the unpopular role of seeking to conserve the Constitution and constitutional principles in the face of demagogic proposals.

Several years ago a bipartisan group was formed to inject some reason into these debates. The Constitution Project has worked long and hard to develop guidelines for when constitutional amendments are appropriate. They have noted: '''The Founders created a Constitution that is difficult to amend, thus insuring a stable constitutional structure. In The Federalist No. 47, James Madison highlighted this very point. He argued that the Constitution should only be altered on 'great and extraordinary occasions.''' Proponents have not shown how this proposal meets those sensible guidelines, nor could they.

Recently, the CATO Institute and the Center for American Progress jointly held a symposium lending further support to rejecting this proposed amendment for a variety of reasons from across a wide spectrum of opinion.

All this raises the obvious question why this is the Republican leadership's priority in the face of an unfinished agenda of legislative matters that deeply concern Americans, ranging from escalating gas prices and health care costs to the ongoing violence in Iraq to homeland security. While the news articles and editorials characterizing this effort as crassly political are too numerous to include in the RECORD, I do ask consent to include a few that are representative. I ask that copies of the USA Today editorial from June 1, 2006, the New York Times editorials of June 5 and June 1, 2006, and the Washington Post editorial of May 24, 2006, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From USA Today, June 1, 2006]

JUST SAY ''I DON'T''

Apparently, issues such as immigration, corruption, gas prices, the budget deficit, the war in Iraq and the prospect of Iran acquiring nuclear weapons aren't substantial enough to occupy members of Congress.

When senators return from their Memorial Day recess next week, their thoughts will turn to June weddings. They plan to spend their time on a bitter, divisive and unnecessary debate over a proposed constitutional amendment to ban gay marriage.

Even supporters of the Marriage Protection Amendment readily concede that the measure to ban same-sex marriage nationwide has virtually no chance of becoming part of the Constitution. (It would need approval from two-thirds of both chambers of Congress, plus ratification by three-fourths of the states.)

So why bother?

Well, Election Day is a few months off. Supporters hope the controversy will energize their base of social and religious conservatives opposed to same-sex marriage.

Their plan could well backfire. Polls show that Americans are evenly divided about the amendment. Religious activist groups are annoyed that President Bush, who supports the amendment, isn't lobbying hard enough for it.

At the same time, the 31 Republican sponsors risk alienating moderate and independent voters who are turned off by the pandering for a futile effort that will further divide the nation.

The gay-marriage issue exploded when Massachusetts' highest court ruled in November 2003 that same-sex couples have a right to marry. Since then, more than 7,300 gay couples there have done so. The commonwealth has survived.

But the public backlash elsewhere has been strong. Nineteen states have amended their constitutions to ban gay marriage. Most other states prohibit it as well.

The state activity makes the proposed constitutional amendment all the more unnecessary. It would take away the traditional authority of states to regulate marriage and impose a one-size-fits-all edict on a nation still grappling with the issue.

Most partisan drives to write social policy into our enduring Constitution have, fortunately, failed. The prohibition of alcohol was such a disaster that it was repealed 14 years later. The Framers purposely made it difficult to amend the Constitution so that intense passions of the day wouldn't lead to laws that might last forever.

Supporters of the amendment trumpet the need to protect the ''sanctity'' of marriage. But preserving the authority of states to decide how to handle same-sex unions—whether through marriage or some domestic partnership or civil union law that protects the basic financial, health and legal rights that heterosexual couples take for granted—doesn't affect anyone else's marriage. And the 1996 federal Defense of Marriage Act already says states may refuse to recognize same-sex marriages performed in other states.

The proposed amendment would squelch the important debate going on at the state level and poison political dialogue. It should be jilted and left at the altar.

[From the New York Times, June 5, 2006]

DIVIDE AND CONQUER THE VOTERS

President Bush devoted his Saturday radio speech to a cynical boost for a constitutional amendment banning gay marriage, It was depressing in the extreme to hear the chief executive trying to pretend, at this moment in American history, that this was a critical priority.

Mr. Bush's central point was that the nation is under siege from ''activist judges'' who are striking down anti-gay-marriage laws that conflict with their own state constitutions. That's their job, just as it is the job of state legislators to either fix the laws or change their constitutions.

If there's anything the country should have learned over the past five years, it is that Mr. Bush and his supporters have no problem with judicial decisions, no matter how cutting edge, that endorse their political positions. They trot out the ''activist judge'' threat only when they're worried about getting out their base on Election Day.

The aim of the president's radio address—which darkly warned that Massachusetts and San Francisco (nudge, nudge) are going to destroy marriage—is the same as the Republican leadership's plans to trot out one cultural hot button after another in the coming weeks. After gay marriage comes the push for a constitutional ban on flag burning, a solution in search of a problem if there ever was one.

All this effort to divert the nation's attention to issues that divide and distract would be bad enough if the country were not facing real, disastrous problems at home and abroad. But then, if that weren't the case, Mr. Bush probably wouldn't feel moved to stoop so low.

[From the New York Times, June 1, 2006]

ON THE LOW ROAD TO NOVEMBER

Republicans are trying to rally their far-right base for the fall elections with a mean-

spirited sideshow threatening to the Constitution: a ban on same-sex marriage.

The Senate Judiciary Committee has endorsed the amendment, which would write bigotry into the nation's charter, by a 10-to-8 vote along party lines, and the full Senate is expected to take it up soon. Since the measure's language covers not only marriage but the ''legal incidents'' of marriage, its approval could jeopardize civil unions, domestic partnerships and other legal protections that many state and local governments now provide for same-sex couples and their children.

No one, including the G.O.P. strategists urging it's fast-tracking, expects the amendment to get the two-thirds Congressional approval needed to send it to the states for consideration. Two years ago, when Republicans staged a Senate vote on the same dismal amendment just before the Democratic convention, it ran into unexpectedly broad opposition. Some conservatives correctly opposed grabbing power from the states by suddenly federalizing marriage law. Supporters of the amendment could muster only 48 votes, well shy of the 60 required to cut off debate and avoid a filibuster.

Plainly, the real purpose of this rerun is to provide red meat to social conservatives, and fodder for commercials aimed at senators who vote to block the atrocious amendment.

It is sad that Senator Arlen Specter, the Republican chairman of the Judiciary Committee, who personally opposes the measure, chose to lend his gavel and vote to speed it to the floor. He got angry when Senator Russell Feingold, the Wisconsin Democrat, objected in forceful terms to both the amendment and the politically motivated scheduling. Mr. Specter and the other members of his committee who approved the amendment have no reason to be angry—just ashamed.

[From the Washington Post, May 24, 2006]

RUNNING AGAINST GAYS; AS AN ELECTION APPROACHES, CAN A VOTE TO BAN SAME-SEX MARRIAGE BE FAR BEHIND?

The Senate Judiciary Committee last week churned out a transparent effort to energize the restive Republican electoral base by picking on gays and lesbians. It reported, on a 10 to 8 vote along party lines, a federal constitutional amendment stating that ''Marriage in the United States shall consist only of the union of a man and a woman''; the amendment would prevent federal and state constitutions alike from being ''construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman,'' Senate Republican leaders are determined to promptly bring up the resolution on the floor, though it has no chance of passage. Its purpose, at this stage anyway, is simply to make a statement—of solidarity with socially conservative voters, of hostility toward marriage equality for gays and lesbians, and of contempt for state governments that might choose to move toward a more inclusive conception of marriage.

Senators will indeed make an important statement with their votes on this amendment—just not about the ''sanctity of marriage,'' The vote, rather, will tally each member's willingness to deform the U.S. Constitution.

On the merits, there is simply no case for an amendment that would write into the Constitution an express command to every state and federal official to discriminate against a class of people. Marriage has always been a state matter in the American system, and nothing about the advent of gay marriage in a single state should change that. Opponents of same-sex marriage outside of Massachusetts have no cause for complaint. What goes on in that state doesn't concern them, and they have shown themselves perfectly capable of organizing in many other states to nip marriage rights for same-sex couples in the bud. What's more, federal law already guarantees that no state need recognize same-sex marriages performed in any other. So the only purpose of a federal amendment would be to prevent states that wish to move toward marriage equality from doing so. Even within Massachusetts, where opposition to same-sex marriage is hardly overwhelming, the experiment with it will not succeed if a majority of citizens over time believe strongly that the decision by the state's high court creating marriage equality should be overturned.

What exactly is the problem that requires upsetting 200 years of constitutional norms? The question answers itself.

Mr. LEAHY. Mr. President, when we began this debate on Monday afternoon I referred to the important discussion that occurred in Vermont several years ago. In that statement I referred to the extraordinary example set of Senator Robert Stafford. I will ask that the Rutland Herald editorial from November 2, 2000, entitled ''Stafford's Gift,'' be printed in the RECORD. This editorial memorializes the bipartisan call for respect and tolerance to which Vermonters responded. Senator JEFFORDS and I were honored to join Senator Stafford in rejecting vitriolic attacks during Vermont's experience with this debate. The Rutland Herald's series of civil editorials that examined these issues during Vermont's debate earned the Pulitzer Prize for the newspaper and its editorial page editor, David Moats.

The fairness and equality that resulted from passage of Vermont's civil union law has not threatened the marriages of the Green Mountain State or any other State in this country. It has not led to the parade of horribles threatened by the proponents of this divisive constitutional amendment.

Recently, I was contacted by a number of physicians in Vermont who voiced their strong opposition to the constitutional amendment that we are debating. These pediatricians are concerned that the proposed amendment will deprive children ''of the benefits of both parents being able to provide health insurance, take time off from work to care for their children, authorize medical care, or stay with their children in the hospital.'' I will ask that their letter be printed in the RECORD.

Hundreds of thousands of American children are being raised by committed same-sex couples. I am gravely concerned that the so-called Marriage Protection Amendment would prevent States from providing benefits and protections to these dedicated parents and their families.

I ask unanimous consent to include two recent editorials opposing the proposed amendment from the Brattleboro Reformer from May 24, 2006, and the Rutland Herald from June 6, 2006, in addition to the aforementioned materials.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rutland Herald, Nov. 2, 2000]

STAFFORD'S GIFT

Robert Stafford was never a politician who wore his heart on his sleeve. He served Vermont with distinction over five decades, beginning as Rutland County state's attorney, later becoming governor of Vermont and later U.S. senator.

He is now 87 years old, and he lives in Rutland Town. During his career he focused on getting the job done, and millions of Americans who are able to use Stafford loans to finance their higher education have Robert Stafford to thank.

So when Stafford came forward on Tuesday to speak about the climate of intolerance that has arisen during the present election campaign, it was because he was moved by a profound conviction. He was not alone. Sens. Patrick Leahy and James Jeffords and Rep. Bernard Sanders were with him to request a return to the atmosphere of respect that has traditionally characterized the state of Vermont.

Stafford described his marriage of many years to his wife, Helen, and of the love they have shared. ''I believe that love is one of the great forces in our society and in the state of Vermont,'' he said. ''And everyone in this country is better off living in a society based on love.''

The civil union law has confronted many Vermonters with the reality that gay and lesbian couples also share love. That reality prompted a question from Stafford: ''If a same-sex couple unites with true love,'' he said, ''what is the harm in that? What is the harm?''

Conscientious people disagree on the moral questions surrounding homosexuality and civil unions. The point is not that everyone should agree; it is seldom the case that everyone will agree on any issue.

The important distinction is between those who disagree with civil unions and those who take their disagreement a step further, using offensive language, shouting down opponents, and employing tactics of character assassination like those being used in Chittenden County.

Disagreement must be respected. But when disagreement turns into denigration, it creates the atmosphere that Stafford, Leahy, Jeffords, and Sanders came to Rutland to deplore.

Stafford and Jeffords are the two senior Republican leaders in the state, and it is good that leading Republicans have chosen to speak up about the extremism that has tarred the debate over civil unions. If the Republicans intend to help heal the wounds caused by the bigotry of a few, they have to be willing to distance themselves from some of the attacks that are made in their name.

Jeffords had harsh words for the ''tone of intolerance and hate'' this year. And he spoke of the need for respect. ''When individuals with narrow minds seek to vilify public servants in the name of religion, it's time to take a step back.''

A flier distributed by a religious group in Chittenden County warned that because of the civil union law, Vermont would become ''a San Francisco-like rural haven.''

Leahy called such fears ''vitrolic nonsense.''

The issue inevitably comes back to Stafford's point, which asks us to look at the reality of human relationships. In homosexual relations, just as in heterosexual relations, there are respectful, loving relationships, and there are relationships that are less.

And as Stafford said, in simple, heartfelt language, when it comes to love, what is the harm?

PRO-FAMILY PEDIATRICIANS,
Burlington, Vermont, June 5, 2006.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.
Hon. JAMES M. JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATORS LEAHY AND JEFFORDS: As Vermont pediatricians dedicated to the care of infants, children, adolescents, and young adults, we strongly urge you to oppose amending the Constitution to forever deny gay and lesbian couples and their children the same protections available to other families. A discriminatory constitutional amendment would have a particularly severe impact on the health and security of the hundreds of thousands of children whose parents are same-sex couples.

On a daily basis, we care for sick children in the context of their families. Children deserve all the love, care, and emotional and financial security their families can provide. Any constitutional amendment that throws obstacles in the way of two parents being able to provide the full measure of security for their children that the law allows is clearly not in the best interest of children. The best result for children is the defeat of the Federal Marriage Amendment.

As demonstrated by census and other data, there are literally hundreds of thousands of children whose parents are gay or lesbian couples. According to the 2000 census, same-sex couples are raising children in at least 96 percent of all counties in the U.S. These children go to school, play in sports, sing in choirs, go to worship services, play at the beach, get hugs from their parents and grandparents—and get sick—just like children of opposite-sex couples or single parents. And when these children are sick, their parents come to doctor visits together, take time off from work to stay home with the sick child, worry about paying the medical bills, and if serious enough, stay at the hospital together with their child, take turns holding an oxygen mask or meeting with doctors and nurses.

Whether the problem is as medically simple as a bad cold or a broken finger or as serious as leukemia or a life-threatening heart condition, a child's illness or injury strains both the child and his or her parents. No parents who are already under the emotional stress of caring for their sick or injured child should also have to worry about whether the Constitution will deprive their child of the benefits of both parents being able to provide health insurance, take time off from work to care for their child, authorize medical care, or stay with their child in the hospital. Adding to the worries of already strained parents is simply wrong.

The American Academy of Pediatrics has found that ''a considerable body of professional literature provides evidence that children with parents who are homosexual can have the same advantages and the same expectations for health, adjustment, and development as can children whose parents are heterosexual. When two adults participate in parenting a child, they and the child deserve the serenity that comes with legal recognition.''

We urge you to find ways to make the lives of all children happier, healthier, and safer. There are lots of good ideas, and good legislation, to meet these goals. But the Federal Marriage Amendment will do the opposite. It will make the lives of children more difficult and make the assurance of the best health care a broken promise. We strongly urge you to protect children by defeating the Federal Marriage Amendment.

Very truly yours,

Dr. Garrick Applebee, Attending Physician, Vermont Children's Hospital, Burlington, Vermont.

Dr. Wendy S. Davis, Vermont Children's Hospital at Fletcher Allen Health Care, Professor of Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Jillian S. Geider, Vermont Children's Hospital, Clinical Instructor, Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Joseph F. Hagan, Jr., Clinical Professor in Pediatrics, University of Vermont College of Medicine, Co-Chair Bright Futures Education Center and Steering Committee, American Academy of Pediatrics, Burlington, Vermont.

Dr. Barry W. Heath, Director Pediatric ICU, Vermont Children's Hospital, Associate Professor of Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Jeremy Hertzig, Clinical Instructor in Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Jenny Hoelter, Resident, Vermont Children's Hospital, Burlington, Vermont.

Dr. Elizabeth Hunt, Pediatrics Resident, Vermont Children's Hospital, Burlington, Vermont.

Dr. Karen S. Leonard, Attending Physician, University of Vermont, Burlington, Vermont.

Dr. Brett McAninch, Vermont Children's Hospital, Burlington, Vermont.

Dr. Meredith Monahan, Pediatric Resident, University of Vermont, Burlington, Vermont.

Dr. Bradford D. Stephens, Clinical Instructor, Vermont Children's Hospital, Burlington, Vermont.

Dr. Alicia J. Veit, Vermont Children's Hospital, Clinical Instructor, Department of Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Anna Ward, Pediatric Resident, Vermont Children's Hospital, Burlington, Vermont.

Dr. Richard C. Wasserman, Professor of Pediatrics, University of Vermont College of Medicine, Burlington, Vermont.

Dr. Paul James Zimakas, Pediatric Endocrinologist, Vermont Children's Hospital, Burlington, Vermont.

[From the Brattleboro Reformer, May 20, 2006]

AGENDA OF DIVISIVENESS

It's very obvious why the Senate Judiciary Committee voted Thursday to revive an effort to enact a constitutional ban on same-sex marriage.

Republicans are getting their arms vigorously twisted by the religious right. They have begun threatening the Republicans that they will stay home in November if progress is not made on banning abortion, same-sex marriage and flag burning.

A poll conducted in March by four groups representing evangelical Christians found that 63 percent of so-called ''values voters''—the evangelicals who oppose abortion and same-sex marriage—believe that, in the words of the poll, ''Congress has not kept its promises to act on a pro-family agenda.''

So, between now and November, you can expect to see these ''values'' issues trotted out by Republicans in Congress to convince the religious right they are still on their side.

It's not like the GOP has anything else to run on. They can't run on national security, not with Iraq in a bloody civil war. They can't run on ethics, not with the growing list of indictments filed against GOP members of Congress. They can't run on the economy, not with $3 a gallon gasoline, rising interest rates and stagnant wage growth.

No, all they have left is the hope that voter turnout will be low and the most extreme members of their constituency will show up to vote.

Mid-term elections are usually decided by turnout, and usually only the most motivated voters from each party show up on Election Day. While pandering to religious extremists may seem like a smart short-term strategy, in the long term, it alienates the rest of the population.

Given the bigger issues facing this nation—out-of-control energy and health care costs, the criminally slow response to the Gulf Coast's plight after Katrina, the lack of an exit strategy from Iraq, the threat of another war in Iran and a president who shows no respect for the rule of law—arguing about flag burning and gay marriage is ridiculous.

But that's the legislative agenda that the Republicans are working on. Even though the gay marriage ban has no chance of receiving the required two-thirds majority which will move the proposed amendment to the states to ratify, the goal is to get both houses to vote on it next month. Likewise for flag burning and more restrictions on abortions.

In short, the GOP would rather devote its energies to pointless and divisive legislation than address the real problems facing the nation.

We do not think this is not going to work this November.

As weapons, the powers of fear and divisiveness, the two biggest guns in the GOP arsenal, are no longer as powerful as they were in 2002 or 2004. More and more Americans, liberals and conservatives alike, are on to the Republican game. This growing awareness that the GOP has nothing going for it other than fear and divisiveness may lead to big victories for Democrats in November. And Republicans will only have themselves to blame.

[From the Rutland (VT) Herald, June 6, 2006]

THE BULLY'S PULPIT

George Bush is a bully and a coward.

How else to explain this weekend's performance by the president, who used his weekly radio address to push for a constitutional amendment banning gay marriage?

His cowardice is long established, from using his family's influence to duck military service during Vietnam to hiding behind underlings while in the Oval Office. He's never seen a fair fight he can't run from or pay someone else to fight for him.

Now he's beaten down in the polls, with both his foreign and domestic policy initiatives in tatters, already a lame duck and staring at a legacy as a war president during a losing fight. His next-best shot at being remembered by history is as the president who single-handedly bankrupted the country, going from a surplus to record deficits almost overnight.

So what did Bush do? What any schoolyard bully does when they feel threatened: He picked on someone he perceives as an easy target.

In this case, the target is gay marriage. While the country is generally more accepting of homosexuals than it was a generation ago, there is still a taboo against using the word marriage to define homosexual relationships.

The GOP used the same gay-bashing tactic to get out the vote in the last election, and their strategists are clearly banking on a repeat performance to revitalize support for the president, and for the party headed into

the fall elections. Bill Frist, the Senate majority leader, claimed an amendment is needed to protect the other 49 states from Massachusetts' recognition of gay marriage in an opinion piece released over the weekend.

Oddly, the tactic may backfire on the GOP. While the states that have voted on defining marriage as the union of a man and a woman have been unanimous in supporting the measures, using the Constitution as a tool must strike many as a large, blunt instrument.

Amending the Constitution is not easy; it is not meant to be so. That choice by the framers, reinforced through the centuries, makes rational people pull back from cheap grandstanding with this nation's most-cherished document. And the latest move is nothing if not a grandstand play.

In fact, true conservatives may find themselves in conflict over whether cheapening the importance of a constitutional amendment is too steep a price to pay, seeing as the country already has the Defense of Marriage Act, which already does what the amendment promises. And they must despair at seeing a raid on states' rights, a conservative touchstone.

But surely, surely the move must backfire in Vermont. Any candidate who does not immediately and publicly renounce a constitutional amendment against gay marriage will alienate the state's open-minded middle of the road, as well as its substantial liberal population. But any candidate who opposes the amendment will alienate the right wing of the Republican Party. So Bush and Frist have put moderates into a tough spot.

Regardless, it is time for Vermont's candidates in this fall's election to stand up and be counted on the issue. No ducking or excuses, please.

Martha Rainville and Richard Tarrant are running as moderate Republicans; it is their party's leadership that has put the issue on the table; it is their time to speak. They both say they are independent thinkers in the Vermont tradition, who will not simply repeat the party line.

Now they can prove that claim or they can follow the lead of their boss, the coward. It's a clear, if not simple, choice.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I rise tonight as a cosponsor and a strong supporter of the Marriage Protection Amendment before the Senate.

If you had told me 10 years ago, or even 5 years ago, that I would be standing before the Senate advocating a constitutional amendment that defines marriage as a union between a man and a woman, I would have thought you had lost your mind. Why in the world would you ever need to do that, I would have asked? Doesn't it go without saying that men and women get married? Yet tonight I do stand in the Senate advocating a constitutional amendment that defines marriage as a union between a man and a woman, nothing else. What was once thought preposterous is now reality. We are faced with this new reality because activist judges throughout the Nation have decided to redefine marriage.

The courts, not the people, not the States, are redefining a fundamental institution of our society, the very foundation of our civilization.

Ironically, this new definition of marriage runs contrary to what a majority of Americans believe. In fact, 45 of the 50 States have either a State constitutional amendment or a statute defining marriage as the union between a man and a woman, nothing else. On average, those measures have passed with more than 70 percent of the voters' support.

Today, the voters in my home State of Alabama—and we will know the outcome later tonight—will vote on a State constitutional amendment regarding marriage. I think I know what the outcome will be in my State. Regardless, no judge should be able to impose his or her will on Alabama or any other State if the voters have decided otherwise.

What appears to be a broad consensus throughout the country for protecting the institution of marriage is being undermined and redefined by activist judges. These judges have struck down numerous State laws intended to protect the traditional definition of marriage. State courts in California, Georgia, Maryland, New York, and Washington have overturned laws or amendments protecting marriage, and a Federal judge in Nebraska invalidated a State amendment prohibiting same-sex marriage.

I have long thought that it was the role of the judiciary to interpret the law, not make the law. However, these activist judges across the country have taken it upon themselves to make laws that, in many cases, redefine the definition of marriage. These judges have taken it upon themselves to make decisions reserved for State legislatures who have worked to be responsive to their constituencies and to define marriage in the traditional sense. The difference is that these activist judges do not have to be responsive to anyone and are accountable to no one.

Abraham Lincoln reminded us in the Gettysburg Address that we have a government of the people, by the people, and for the people. Activist judges, accountable to no one, should not be allowed to govern this country. The basic foundation of our Constitution does not invest total control in the judiciary. It is not government by the judiciary; rather, it is a government by the people. On this issue, the people have spoken and will speak again.

Activist judges should not be permitted to redefine the sacred bond of marriage. For generations, humanity has defined marriage as the union between a man and a woman upon which families are built. It is the institution of marriage upon which our society has flourished.

Mr. President, States, in my judgment, must be allowed to continue to exercise their will. States that pass laws on constitutional amendments should not be overridden by an overactive judiciary that believes it has the power to redefine the moral character upon which our Nation was built. I believe the President recently summed it up when he said:

> The union of a man and a woman in marriage is the most enduring and important human institution. For ages, in every culture, human beings have understood that marriage is critical to the well-being of families. And because families pass along values and shape character, marriage is also critical to the health of society. Our policies should aim to strengthen families, not undermine them. And changing the definition of marriage would undermine the family structure.

Therefore, tonight I stand before you in strong support of this constitutional amendment to define marriage as a union between a man and a woman.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I thank my colleague from Alabama for his support for the marriage amendment. I note, as he knows, that Alabama is voting on this very day on this subject. I feel confident that it, along with the other 19 States—this will make 20—will support marriage as a union between a man and a woman.

Mr. SHELBY. I believe that is going to happen today.

Mr. BROWNBACK. If it doesn't——

Mr. SHELBY. Oh, it will.

Mr. BROWNBACK. That is another indication that 20 States have directly voted on this issue. If we would have Senators who follow what the States have done, we would have 90 votes for a constitutional amendment to define marriage as a union between a man and a woman. I thank my colleague for his strong support. I believe the people of Alabama are going to do it today as well.

I have another colleague who will be speaking shortly. In the interim, I want to develop an argument that has been put forward but I think is an important one to further raise and develop. It is one I have mentioned previously on religious freedom. We have the article that has been mentioned by several by Maggie Gallagher on why Catholic Charities was run out of Boston because they didn't support homosexual adoptions. Rather than breaking one of the tenets of their faith, they said we can no longer do adoptions. There is an argument that churches that do not perform same-sex unions will not be allowed to perform any marriages. I think this bears looking at because it is a serious issue that has a legal history and pedigree to it. It is one we should be concerned about taking place.

I was in a church last Saturday night. My oldest daughter was the maid of honor in a wedding. It was a beautiful ceremony. That church has a very clear conviction that marriage is between a man and a woman. They

would not agree to doing marriages between same-sex couples. Then does that mean that they cannot perform any marriages? OK, some say it is too strong of an argument. Yet you have that history in the adoption field, and you have a legal pedigree that is there to develop on top of that. I think that bears watching.

There is another argument I want to further develop while my colleagues are coming to the floor; that is, this one on ''slippery slope.'' People say this is one that isn't going to happen. It is not going to develop. Yet I think the legal pedigree is there for a slippery slope to develop. Some will be recognizing different groups that have stepped forward already to say that if two people of the same sex can be married, why can't there be additional people? What is the legal bias against having more than two people in a marital arrangement? This even has a term now, polyamorist. They have already had one court case trying to gain recognition for a marriage of a woman and two men. They say in some of their advocacy that they are waiting for same-sex marriage to pass to begin agitation to legalize more than two people getting married.

If you think that is not going to happen, you had the minority opinion in the Supreme Court case that recognized that, what is your legal basis of stopping that, too, if it can be two men or two women? Why is it only two? That is what this group is starting to agitate for. They are saying that granting same-sex marriage is supported on equal protection grounds. How is the court going to deny them? There are plenty of polyamorists out there.

The problem goes further. We have an advocacy group called the Alternatives to Marriage Project which supports polyamory and other innovations to parental cohabitation. The Alternatives to Marriage Project is quoted frequently in the mainstream media. Believe it or not, some of the most powerful factions of family law scholars in the law schools favor legal recognition of both polyamory and parental cohabitation. Even law review articles have been published advocating for both. Again, they argue that if two men can get married and two women can get married, if this is an equal protection argument, why is it limited to just two? What is the legal basis or foundational basis in society for this?

I raise that as a point because this area of law is starting to develop. Even the influential American Law Institute came out with proposals that would grant nearly equal recognition to cohabitation. So this is developing in the law.

I raise these items as issues knowing that some people will scoff at it. You can look at what happened in the world in the past year or so as well. Sweden passed the first same-sex partnership plan in the world and had serious proposals floated by parties on the left to abolish marriage and legalize multi-partner unions. So this is out there and it is one of those things we should watch.

My colleague from Alabama has arrived. I yield the floor to him for his comments on the constitutional amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank Senator BROWNBACK. He is such a champion on this issue and has raised so many important matters for us to think about. I believe the debate we are having is a very important debate. I remember the hearings we had in the Judiciary Committee. The Senator had several—I believe he had one in the Commerce Committee maybe, and I had one in the Judiciary Committee on marriage.

One of the things we found was that almost every category of individual character and wellness was better if you were married. That is just the way it was. You had a longer lifespan, you ended up with more wealth, you had better health, you were happier, and there was less drug use, less criminality, and less suicide. All of those things are so taken for granted in the committed, historic marriage relationship.

I believe this issue is an important one that is before us. I want to share a few thoughts on the matter that deals with certain issues that are important to me, which I think are important. We are not here, let me say, first of all, because of some band of Christian conservatives. Indeed, virtually every religious organization in America cares about this issue. It is not that we wanted to enter into some sort of argument with the gay community or with those who favor same-sex marriage. We are not here because of a political agenda.

Traditional mainstream Americans were going about their business when courts began a pattern of rulings that subverted democratic principles on the long held meaning of marriage. As the cases and lawsuits have mounted and scholars reviewed the opinions and pondered their implications, it became clear that this activist movement was bold and far reaching in scope. Their design was to effect a complete change in the meaning of marriage, altering an institution that is thousands of years old. The lawyers who filed these cases had a simple plan: They would file a lawsuit attacking the traditional definition of marriage as a union between a man and a woman. They would urge the courts to declare, based on some subjective constitutional theory such as evolving standards of decency, that the Constitution of the United States—they sought to have the courts declare that the Constitution of the State or the United States requires that marriage be redefined to include same-sex marriage.

When the people complained about this usurpation, what did you hear back from those who promote these ideas?

They all lift their noses and respond: ''All we are doing is being faithful to the Constitution. Don't you respect the Constitution? We know you have deeply held beliefs, and we understand that, but we all must yield to the requirements of the Constitution, don't you know?''

That is kind of the feedback we get on this issue. But the American people are not so easily fooled. They chose not to go quietly this time. They have chosen to fight, and it is going to be a long battle. And well they should have made that decision since the question here raises the nature of marriage and the usurpation of judicial power to effect a political or social agenda, which are matters that go to the heart of this Republic and our governing structure.

So let's make some things clear. One, those who believe in the traditional definition of marriage did not start this fight. The debate is not a distraction from important issues; it is an important issue. It is not about wedge politics.

Let me state the plain truth. We are here debating this issue because there has been a deliberate and sustained effort by leftists in America to alter the definition of marriage to include a union of two men or a union of two women. This action has been, to some degree, successful, as shown by rulings in a number of important cases. So the matter is real. It is not a theoretical matter; it is very real, right now.

I do not agree with these changes in marriage. I favor the traditional approach for many reasons. More importantly, the American people overwhelmingly oppose this idea. There has been no support in the Senate, no support in the House of Representatives or the State legislatures for such actions. This new marriage concept has been rejected by legislative branches all over the Nation and has been rejected in, I think, 19 statewide votes, averaging about 70 percent each time.

These social activists have always known they have no chance to get elected officials to adopt their concept of marriage. It will not be voted in. So they have looked through the Constitution and decided their goal could only be achieved by arguing before activist judges that denying same-sex couples the right to marry is a denial of the constitutional guarantee of due process or equal protection or ideas such as that.

The Supreme Judicial Court of Massachusetts flatly agreed with those lawyers. This court declared that the constitution of Massachusetts, adopted in 1780, requires that same-sex unions be given the same recognition as a union of a man and a woman. They found that a constitutional requirement. This is activism, pure and simple. It is the very definition of activism.

The drafters of that constitution in 1780 would never have imagined their

constitution would some day be so twisted. The Massachusetts Supreme Judicial Court plainly reached, I believe, a political, social, and cultural conclusion about homosexual unions. And they took language out of their State constitution that was never, ever crafted, designed, or expected to cover such a situation as this, and they just declared that the long established concept of marriage violated the constitution of Massachusetts. They just did it. These judges don't have to stand for election—certainly Federal judges do not—and they are not accountable to the American people. If judges do not show their personal restraint, modesty, and fidelity to the Constitution—whether or not they like the Constitution—then democracy is thwarted. So this is no small matter, I say to my colleagues.

Some will argue that the problem is a problem for Massachusetts only and that each State can decide these issues. But the U.S. Constitution provides that every State must give full faith and credit to the marriages of another State. In other words, the U.S. Constitution ordinarily requires that each State must recognize the marriages of other States.

But what about DOMA? We passed DOMA, the Federal Defense of Marriage Act, in this Congress a number of years ago. It was passed to deal with what was perceived as a problem a decade or so ago. Didn't DOMA fix the problem?

The simple answer is no. To understand why, let's look at the Supreme Court's ruling in Lawrence v. Texas. I was attorney general of the State of Alabama. This deals with one of the things you do as an attorney general of a State: you defend the laws of that State when they are challenged in the Supreme Court of the United States. So I can identify with Texas in this matter.

Without regard to established law, the Supreme Court reversed their own opinion on a very similar case in Georgia just 17 years earlier and followed a new vision of social justice, masquerading, I suggest, as constitutional law. In Lawrence v. Texas, the Supreme Court reversed their opinion in Bowers v. Hardwick, a Georgia case, and said all State sodomy laws are unconstitutional.

This is most certainly not a discussion concerning sodomy laws or the wisdom of such statutes. This debate is about the Constitution, what it means, and who controls the legal and social policy in America. Some statutes and ordinances certainly are unconstitutional and should be declared so. A city ordinance that required Rosa Parks to sit at the back of a bus simply because of the color of her skin did violate—clearly violated—the command of the U.S. Constitution that everyone be provided equal protection of the laws, and Judge Frank M. Johnson and the U.S. Supreme Court were correct to strike it down as discriminatory. That decision was not activism. It was a new commitment to the plain meaning of the existing Constitution that had been the law all along.

The situation is quite different in Lawrence. It is instructive to review how five members—only five, really, because Justice O'Connor only concurred in the result, not in the reasoning—of the Supreme Court came to reverse Bowers, which had upheld Georgia's law just 17 years before.

So what changed? Certainly not the law. Certainly not the Constitution. This is why our American people need to pay close attention to these issues, or the judicial sleight of hand that is beginning to occur too often will succeed. No doubt the American people are paying closer attention today than they have in the past.

The majority opinion in Lawrence divorced morality from law. The Court flatly held that morality, even long established, objectively determined moral values, cannot be a basis for law, so they struck down the Texas law. The Court said the law was a product of morality, which they found was without value as a justification for law. I kid you not, that is what they did.

Remember, the Court is examining now a long-established provision of criminal law, a provision that had been recently upheld as constitutional. Remember also, the issue is not whether you approve or would vote for such a law but whether it stands without any basis such that it becomes the duty of the Supreme Court to strike it down as violative of the U.S. Constitution. Lawrence was troubling, with far-reaching ramifications.

What does Lawrence have to do with the marriage amendment? A great deal, unfortunately. If the Supreme Court were to hold that marriage should no longer be limited to a union of a man and a woman and a court finds as they did in Lawrence that such is required by some word or phrase in the Constitution, than any Federal law, such as DOMA, or any State constitutional provision—we are voting on one in Alabama today to protect marriage, and I assure you it is going to pass—but any State constitutional provision would be erased from the books, held for naught, and struck down if found to be in violation of the Constitution because the Constitution is the supreme law of the land and its provisions trump all other laws and State constitutional provisions.

In Lawrence, the U.S. Supreme Court used very broad language that by fair deduction would suggest that the majority's reasoning would be supportive of redefining marriage. While not denying the logic of this possibility, the Court in its opinion in dicta did note that Lawrence ''does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.''

So the facts did not involve that, but the opinion did not deny that this same reasoning could be used in the future in cases such as the Massachusetts marriage case. It was obvious, of course, that the issue of same-sex marriages was not before the Court in Lawrence, but they were aware of that.

Justice Scalia was not beguiled by this language. His brilliant dissent went right to that point, and it is the issue before us today. Justice Scalia aptly stated:

> This case ''does not involve'' the issue of homosexual marriage only if one entertains the belief that principle and logic have nothing to do with the decisions of this Court.

It doesn't involve the issue of homosexual marriage only if logic and principle have nothing to do with the opinions of the Court. What he is saying quite plainly is, following the logic and principle of the opinion in Lawrence, marriage, as we know it, is in jeopardy today, and he dissented. Justice Scalia is a brilliant jurist. He loves the law and believes in being faithful to the law as written, not as he may wish it to be.

This debate in the Senate about activism is important. It is a debate that was raised aggressively in recent elections in Senate races and the Presidential election. President Bush said he admired Justice Scalia and he wanted more judges on the Court such as Justice Scalia.

Justice Scalia's dissent reflects one of the critical issues that highlight the difference between an activist judge and one who is respectful of the people's branch of Government, the legislative branches of Federal and State government.

In large part, the Massachusetts marriage case and Lawrence v. Texas are the kinds of rulings that have caused so much controversy, rulings where a slim majority of an aging group of justices—four maybe in some courts, five on the U.S. Supreme Court—allow personal views on some subject to cloud their thinking to such an extent that they delve into the Constitution in order to find some phrase they can use to impose that view on the people, all the while insisting they are merely following the commands of the Constitution.

In fact, our Supreme Court Justices have created a double standard. They have plainly held that the legislative branches—the Congress, our State legislatures—elected by the people, cannot base a law on an established, objective moral code, but they—the enlightened judicial branch, the one branch of our Government unaccountable to the people—may strike down congressionally passed laws if the Justices conclude that the legislative laws do not comply with what the judges find are ''evolving standards of decency.''

''Evolving standards of decency'' is a phrase activist judges often use, and it can mean anything. Who can say what that means? ''Evolving standards of decency'' is not a proper legal standard. It lacks the precision needed for a legal standard. It is, in fact, not a standard

at all. In truth, it is a license to the court. It can allow as few as five Supreme Court Justices to roam the world to find European law or some other foreign law or some study or some report which they base their opinion upon.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair. I ask unanimous consent for 5 more minutes.

Mr. CARPER. Mr. President, I will have to object to that. I agree to 1 more minute.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 1 more minute.

Mr. SESSIONS. Mr. President, I would just say this: that we are at a point in our history where it is now the opportunity of this Senate to allow the American people an opportunity to have their views heard on the question of the definition of marriage. It has been eroded by courts improperly, in my view, but it is being eroded nevertheless. By voting for this constitutional amendment, we will not make any constitutional amendment become a reality. We will simply send the matter to the States. And if three-fourths of the State legislatures agree, only then will this amendment become law. Why would we want to deny the American people the right through their representatives to adopt this amendment? I do not know, and I do not think we should. I think we should support the amendment.

How should the people properly respond to this real or perceived abuse and, in particular, to this very real threat to traditional marriage?

The proper answer is for the people to ask their elected representatives to pass a constitutional amendment to fix the problem, or the potential problem.

It is the right way, the lawful way, for the people and the Congress to respond.

Amazingly, it has been suggested by those who oppose the right of the people to have their voice heard on this matter, that the Marriage Protection Act violates the Constitution. How silly is that? The Marriage Protection Act would become a part of the Constitution. How could it violate the Constitution?

More importantly, the court rulings that have created this crisis are themselves, in my view and the view of many, contrary to the Constitution. Regardless of whether such rulings are sound, the people have a right to have their voice heard on the matter of marriage.

Some here argue that we should not have an amendment that decides the question here in the Senate but should allow the States to do it. But, that is the problem.

The States, and the people, are having their decisions overturned by courts. On May 16, a Georgia judge struck down that State's law that prohibits same-sex marriage. At least nine States are facing similar lawsuits. And if Lawrence is any indication, the U.S. Supreme Court seems poised to make a similar ruling.

This is why the American people are rightly concerned and want us to do something to stop this trend by the undemocratic branch of government from altering marriage, a cornerstone of our civilization.

Of course, if this Congress were to pass the Marriage Protection Amendment, it does not then become law. It then would go to the States where three-fourths of the State legislatures would have to agree, for it to become part of our Constitution.

Thus, our vote today is the key step in allowing the States to express the will of their people.

Thus vote against the Marriage Protection Amendment by those who say they oppose same-sex marriage, would deny the States the authority they need to protect their laws from judicial activism.

Finally, some argue that marriage is not an issue of such importance that it should be placed in our Constitution or even have debate time allotted to it. They are wrong. This is a huge issue, one of great importance. The real question is, why deny the right of the American people through their legislatures the right to vote on this issue? What harm is there in letting the people speak? I suspect the real concern of many is that if this amendment were to get to the States, it would pass. Those who openly or surreptitiously favor same-sex marriage surely would not want the Marriage Protection Amendment to go to the States.

And, there is nothing unusual about constitutional amendments that address specific problems.

We have passed amendments that are quite specific as well as broad.

The 27th amendment, ratified May 27, 1992, provides that Congress can't raise the pay of members of the House or Senate until the next election in the House.

The 26th amendment, ratified July 1, 1971, provides that eighteen-year-olds must be allowed to vote.

The 25th amendment, ratified February 10, 1967, provides for presidential succession.

The 24th amendment, ratified January 23, 1964, abolished the poll tax.

To my mind, the Marriage Protection Act is a wonderful way to allow the American people to have their voices heard on a matter that is very important to them and our Nation.

The courts have gotten it wrong. Wrong as a matter of law and wrong as to policy. They are not higher beings. They make mistakes and they need to be held to account so that good law and good policy are restored. A narrowly drafted constitutional amendment that deals with this one, single issue, is the proper way to give legitimate voice to our citizens.

The traditional understanding and law of marriage are being overturned. The sounds of the conflict can be heard in Lexington and in Omaha. Why stand we here idle? Let's authorize the Marriage Protection Amendment to go to the States so the people's will may be accomplished. After all, our founders created a democracy, not an oligarchy.

I yield the floor.

Mr. CARPER. Mr. President.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, my friend from Alabama has just called for the Senate to vote and the House to vote, two-thirds majorities to vote to send to the States the question of whether or not our U.S. Constitution should be amended with respect to marriage being only between a man and a woman. Actually, in my State and in 45 other States around the country, we have had the opportunity to debate this issue, to consider this issue, and to pass laws with respect to marriage as between a man and a woman.

Personally, I believe that it is. As Governor of Delaware, a number of years ago I signed into law the Defense of Marriage Act in my State that says marriage is something that occurs between a man and a woman. Not only did I sign that law, but I supported the Federal law which was enacted here, signed by former President Clinton, which said States like my own and those other 45 States, to the extent that we define marriage as being between a man and a woman, our State law, respective State laws, cannot be violated by the actions of some other State.

I will give an example. If we have a same-sex couple in Delaware who decide to go to another country or another place where same-sex marriages are allowed, and then that same-sex couple comes back to Delaware and claims they are married, they are not married in my State. It is not a marriage that we recognize. In fact, for the over 200 years that we have been around as a country, States such as Delaware or California or Georgia or Alabama or Kansas have set the rules for marriage. We don't say to the Federal Government: You determine who can get married, at what age people can get married, or what kind of waiting period there has to be, or can first cousins marry or second cousins; we don't say what the rules of the road are with respect to divorce, with respect to alimony, with respect to child support. For over 200 years we have left those issues to the States.

Today we have said very clearly in my own State, marriage is between a man and a woman, a view that is reflected in almost all of the other States in this country.

If we get to the point where our ability to maintain that position in my State or in the other 45 States that have adopted similar laws, where those laws are threatened or basically rendered ineffective, then I think the idea of visiting a constitutional amendment is something we may want to do. But I

don't know that it is needed. I am not convinced that it is needed for us to amend the Constitution to do something that I believe we already have done by changing our own State laws, and those State laws are protected by a Federal law.

We have not amended the Constitution a whole lot of times. We have amended the Constitution 17 times; since 1791, 17 times. I am 59 years old. We have amended the Constitution just six times in my own lifetime. We have amended the Constitution for good and valid reasons. We have amended the Constitution to protect our freedom of speech, to protect our ability to worship God as we see fit. We have amended the Constitution to ensure that we have the right to bear arms, to ensure the right of a trial by a jury of our peers. Other constitutional amendments have been to protect us from unlawful searches of our homes and have guaranteed our rights to assemble in Washington and in Dover and across this country to present our grievances to those who serve us. Constitutional amendments have abolished slavery. They have provided women the right to vote. They have provided 18-year-old young men and women with the right to vote, and they have limited our Presidents to serving only two terms. They decided through a constitutional amendment that if we don't have a Vice President for some reason, how one would be selected. All of those are important, and some would say urgent, pressing needs that have been addressed and have been put into our Constitution.

I am not convinced given the actions of my own State and 45 other States, the actions of the Congress and former President Clinton signing the Defense of Marriage Act, that we need to enshrine in the Constitution today what we have already enshrined in State laws and Federal laws with respect to the fact that marriage is between a man and a woman.

I do know what some would say: that this is election year politics. We do this every 2 years, and it happens sort of coincidentally like 5 months, 4 months before an election, and it is through the efforts of one party or the other to try to energize their base.

I don't know if that is part of this. I do know this: There are plenty of other important issues that we need to be addressing.

We have a war in Iraq where the going is tough. We are losing people, including some young men from my own State just last month, and we are suffering tragic and sad losses of life. We have a situation in Afghanistan which is not going as well as some of us would like and had hoped for. We are a nation today where almost 60 percent of our energy depends on foreign sources, a lot of it controlled by people who don't like us very much. And we aren't convinced that when we take our money to fill up our tanks with gas that they will not use our money to hurt us.

Our dependence on foreign oil continues to grow, not abate. The cost of health care is killing us in terms of our ability to compete. As a nation, we spend more money—companies such as General Motors—on health care than is spent on all capital investments around the world. We have people who are sick and dying from asbestos poisoning, and they are not getting and their families are not getting the money they deserve. Meanwhile, other folks who have been exposed to asbestos but don't have asbestosis and have never had it, will never have it, they get money. We live on a planet where the air is becoming warmer, and we are threatened by more hurricanes, tougher and stronger hurricanes and typhoons and cyclones as we have ever seen in recent years.

We have a Tax Code where literally, last year, $290 billion was owed in taxes. We know who owes it, and we know how much they owe, but it wasn't collected. Federal agencies made over $50 billion of improper payments last year, most of those overpayments. We have government-sponsored enterprises such as Fannie Mae and Freddie Mac that don't have the kind of regulation they need. We have data breaches where the Veterans' Administration is literally turning over to unscrupulous people data for 25 million, 26 million of our veterans. We have a passenger rail system in this country which is, compared to the rest of the world, just sad, and we aren't doing anything about it. We have legislation that passed 93 to 6 last year to reauthorize and improve passenger rail service and nothing has happened to it. Nothing has happened to it. We have a postal system that literally is a relic of the 1970s trying to operate in the 21st century. We have plenty to do. We have 45 legislative days ahead of us to do all of that, and we are spending 3 of those legislative days on this.

I know there is a need that some Republicans feel to bring up this issue again, and I respect the fact that you are in the majority; it is your right. I understand later this month we will deal with some other contentious issues. I have had the opportunity to meet with the Republican leadership. Some of us have had the opportunity to meet with the Republican leaders. We are self-described centrists. I call us the flaming moderates. But we have sort of reached out to the Republican leadership to say there is a whole list of things that we need to focus on: deficit reduction, budget deficit reduction, trade deficit reduction, energy independence, you name it. There is a whole long list of what we ought to be doing, and we should be focusing on that agenda, not just on this.

That is not to say marriage isn't important; it is hugely important. It is the basic building block of our society. We know families are in trouble and hurting in a lot of ways. One of the things I would like to see us do and put a lot more emphasis on is ratcheting down unwed mothers and teen pregnancies. We ought to do a heck of a lot more in childhood education to reduce the likelihood that young women will bring children into the world and that young guys are going to impregnate them. We need to do a whole lot more in that regard. That is the kind of agenda that we need to be working on and looking to across the aisle.

That having been said, I have used my time. I will close with this: In my view, marriage is between a man and a woman. In Delaware's view, marriage is something that is between a man and a woman. We passed a law that says that. We are not the only State that did that. Forty-five other States did the same thing. We have a Federal Government, this body, the House of Representatives, and the former President who signed a Federal law that said what we have done in Delaware and 45 other States is good and is not going to be overridden. It is not going to be just pushed aside. Until that happens, I am convinced that the proper thing for us to do is to uphold marriage, to honor marriage, and to continue to work as we have in our States to pass good State laws affecting marriage, affecting the raising of our children, but not necessarily to ask the Federal Government to do that because until I am convinced and until most of us are convinced that, frankly, we need Federal intervention, then I think let's stick with what has worked for us for over 200 years, and that is allowing the States to do this.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent to be allowed to address the Senate until 7 p.m. tonight.

The PRESIDING OFFICER. The Senator has that right.

Mrs. BOXER. Mr. President, before he leaves the floor, I wanted to say to my colleague from Delaware that he painted a very strong case of what we ought to be doing on the Senate floor. Without reading a note, he ticked off a list of six or seven things or eight things that we really need to take care of, and I just wanted to thank him very much.

I rise today to oppose the proposed constitutional amendment on marriage. I oppose it. I think it is divisive. I think it is unnecessary. I want to lay out the reasons.

First of all, the proposed amendment is nothing more than a cynical election year ploy. I truly believe that, and I think if anyone has followed this every-couple-of-year debate, they know it is true. It pops up like clockwork around election time.

Second, the definition of marriage, as has been stated by Senator CARPER from Delaware, who was the Governor of that State, has been determined by the States, and indeed the States are acting in many ways to decide whether they want to legalize gay marriage or legalize domestic partnerships or civil

unions or outlaw all of these things. So States are making their decisions, and they should be respected.

On a personal note, let me say that I have been married for 44 years to the same person. I have to say as someone married for that length of time, the fact that two gay people decide they want to take care of each other for the rest of their lives and care about each other for the rest of their lives, that doesn't threaten my marriage one bit. It doesn't threaten me. It doesn't make me worry about my marriage. My marriage is too strong for that. The fact is, if someone feels their marriage is threatened because two gay people care about each other, then their problems go way deeper than they are caring to admit.

Throughout our Nation's history, we have only amended the Constitution to extend rights and equality, and that is an important point. So I think we have established in this debate that the States are taking care of this issue, and they are coming out in all different places. That is the way it ought to be.

So here we are, June 2006, with only a few precious months left on the Senate calendar, and we are facing some very serious issues at a critical time in our history. It is our duty to respond to the American people and their needs. I truly believe that this President and the Republican leadership are ignoring the needs of the American people, and that is why we see the lowest ratings ever—I think ever—for this particular Congress and very low ratings for the President.

For example, what do President Bush and the Republican leadership say to the families of our soldiers in Iraq and Afghanistan who want to know when their loved ones will be coming home? Why aren't we talking about that instead of an issue that is being handled by the States? Maybe they don't answer that question because they don't want to say that the war in Iraq has killed and wounded over 20,000 American soldiers, and there is no end in sight to the war.

That brings up an issue that I care a lot about, which is the state of our military men and women. If you want to talk about their marriages for a minute, why don't we do that? Divorces are up, way up, among families who are deployed to these war zones. Families are suffering. The divorce rate between 2000 and 2004 nearly doubled in the Army, and it did not double in the Army because two people who happen to be of the same sex care about each other and want to take care of each other for the rest of their lives. That is not why military marriages are failing. They are under stress, impossible stress, the hard-to-imagine stress of being deployed again and again and again, going out on a battlefield with antidepressants being handed out to them. That is why they are suffering. That is why we see their marriages breaking up and their children crying themselves to sleep every night. But, oh no, we are not talking about that. We are talking about an issue that is being handled by the States.

I don't understand why this administration will not talk about these issues. Why won't they talk about the fact that we have lost our focus in Afghanistan, despite the fact that a resurgent Taliban has vowed to step up attacks during coming months and we are seeing such a resurgence of the Taliban there. Why aren't we discussing that instead of a cynical and divisive and unnecessary constitutional amendment about something that is being taken care of by the States?

What do President Bush and the Republican leadership say about our security here at home? What they don't want to say is that nearly 5 years after 9/11 they still have not adopted the recommendations of the 9/11 Commission. Shouldn't we be discussing ways to secure our ports and our rails, and ways to track foreign visitors in the U.S., instead of this cynical, divisive and unnecessary constitutional amendment on a subject that is being handled by the Governors and by the States?

Why do President Bush and the Republican leadership say nothing about gas prices? Why are they doing nothing about gas prices? Maybe it is because they don't want to say that they don't have any solutions—like raising fuel economy standards in a meaningful way or strongly promoting the use of hybrid cars or flex-fuel vehicles so we use less gasoline. This President tomorrow could issue an Executive order that says all the cars that are bought by Federal taxpayers for the Federal fleet have to be the most fuel efficient cars available. They are not doing that. They would rather talk about this amendment, which is about a subject that is being handled by the States.

What does the President and what do the Republicans and the leadership say to the millions of Americans who need access to affordable health care? They don't want to talk about that. They want to talk about this divisive amendment. Maybe it is because they have no clue of what to do, even though health care costs continue to be a tremendous burden on our small businesses and our individuals and our families, and the prescription drug benefit is rife with problems.

Tomorrow we could vote to give Medicare the power and the authority to negotiate for lower drug prices, which would save that program millions, and we would be able to make the program stronger and not put a halt to the benefits, which is called a doughnut hole, just when the sickest patients need more. Oh, no, they would rather talk about an amendment on a divisive subject that is being handled by the States.

Why don't they talk about the fact that our families are struggling to pay for college tuition for their children? They don't want to talk about that because they have failed to help America's families pay for college, despite the fact that tuition is becoming hugely expensive and more expensive each and every year. As a matter of fact, President Bush just signed a tax law that makes college loans more expensive. But, oh no, we can't talk about that. We are going to talk about a divisive amendment on a subject that is being handled by the States.

Why don't they want to talk about our fiscal situation? Why don't they? They don't want to say that as a result of their policies, the policies of this administration and my Republican friends, we now have seen the surpluses that were left to them, to their stewardship, turn into deficits as far as the eye could see. They are projected to hit well over $300 billion, and the public debt stands at an eye-popping $8.4 trillion. When they got the reins of Government there were going to be surpluses as far as the eye can see. Now there are deficits as far as the eye can see.

They don't want to say that it is this administration's failed policies that will leave our children and grandchildren with a bill for the tax cuts to the wealthiest people, tax cuts that we can't afford.

How do they really respond to the concerns and the anxieties of the American people, anxieties and concerns that we see in poll after poll? This is not Democratic polls or Republican polls, these are everybody's polls. People are worried. They say we are on the wrong track.

But this is what this administration says, and this Congress, they say: Sorry, America, please hold. Please hold, America, while the Senate takes time to consider a constitutional amendment that has nothing to do with the most serious issues you face today. Why? Because they need to score political points. Please hold, America, because, although we have been elected to serve you and unite you, we would rather divide you for our own partisan interests.

If I were a conservative I would be insulted today, insulted by the fact that I am being used as a political pawn by this President and the Republican leadership. I would be insulted.

The issue of marriage has been determined by the States. For those people who worried about it, there was DOMA, the Defense of Marriage Act. I believed at the time that wasn't even necessary because I believe the States have the right to make decisions about marriage. But it passed and it has been upheld. So what is the problem? There is not a problem.

From the party that says let the States decide, suddenly the States do not know as much as these Senators here. They know everything, and they are going to amend the Constitution on something that the States are handling.

This, in many ways, is a telling moment for this Senate. With all the issues I have laid out and the issues

that Senator CARPER has laid out, there is no planning for these issues. So this Senate is being used as part of a political campaign. I resent that, when we have men and women dying every single day in Iraq, newspaper reporters being blown up. But we have to talk about a subject that is being handled by the States.

As I said before, we have never amended our Constitution to take away rights. We don't do that in America. We are too strong for that. We are too good for that. We are a model of freedom because of that. But that is precisely what is being proposed here, an amendment that is unnecessary because the States are handling this and all this does is divide us instead of uniting us.

Look at some of the great examples of our constitutional amendments.

The Bill of Rights—the first ten amendments—guarantee important liberties to Americans, from freedom of speech to freedom from unwarranted search and seizure to freedom of religion. And the 10th amendment reserves for the States all powers not specifically given to the Federal Government.

The 13th, 14th and 15th amendments corrected the horrific injustices of slavery by giving African-Americans the right to vote and equal protection under the law.

The 19th amendment gave women the right to vote, and the 26th amendment gave 18-year-olds the right to vote.

This short but impressive list of amendments demonstrates that our Constitution is meant to expand, not restrict, freedom and equality.

I want to say to my colleagues that there is something about this debate that has bothered me. As I have listened to some of my colleagues comment in support of this proposed amendment—which is their total right to support—I have been troubled by the suggestion that gay Americans are responsible for a host of problems in our society, from children born out of wedlock to poverty to divorce. These comments are wrong. These comments are wrong. It is wrong to find scapegoats in our great country. Gays and lesbians, they are God's children too. They wake up every morning, they try to do the best to live their lives, the best for the people they love. And they live their lives one day at a time.

We can solve problems such as unintended pregnancies, poverty, divorce, and adoption without stooping to scapegoat and hurt so many people.

If we want to strengthen families, let's strengthen families. Let's help families with their college tuition. Let's help families with their child care. Let's help them by raising the minimum wage. Let's clean up Superfund sites that are near schools. Let's help the 44 million Americans who need health insurance. Let's help those who are reaching retirement age, who are so frightened because the promise of the golden years is not there.

Let's reach out to each other and do that instead of being forced to deal with manufactured political issues which, again, pop up every election year. That sends false hopes out to some Americans who really want this constitutional amendment. They are being used. It also sends out fear and sadness to so many other Americans.

We can do better. We must do better for all Americans.

I yield the floor.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the motion to proceed to the marriage amendment be temporarily withdrawn and that the Senate resume that motion immediately upon convening tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

WEST UNION, WV: STILL MAKING HISTORY

Mr. BYRD. Mr. President, among the beautiful, rolling-green hills of northern West Virginia is a little town with a big history. I am speaking of the town of West Union, the county seat of Doddridge County.

Once a center for railroading and other forms of transportation, as well as oil drilling, coal mining, and and other forms of businesses and manufacturing, West Union was an important and thriving commercial center in the late nineteenth century. Unfortunately, like too many small towns in West Virginia and across the country, West Union has fallen into some hard times.

Nevertheless, West Union retains its rich and colorful history. Indeed, the entire downtown district of West Union has been placed on the National Register of Historic Places. The downtown section contains buildings that feature a wealth of architectural styles, with four of them having been listed on the National Register. These historic buildings include the Doddridge County Court House with its Romanesque architecture, and the Silas Smith Opera House which was built at the turn of the last century and now serves as the county library.

For a small town in the hills of West Virginia, the town of West Union has been the home of a number of prominent American citizens. General Bantz Craddock, who rose to be the Commander of U.S. Southern Command and is responsible for military operations in the Caribbean, Central America, and South America, was raised in West Union.

For many years, West Union was the home to Clyde Ware, a novelist who has been actively involved in television and film production. In fact, Mr. Ware wrote and directed many episodes of what was one of my favorite television series, ''Gunsmoke.''

The town's most famous historic resident was the legendary Ephriam Bee. Mr. Bee was a pioneer, a blacksmith, the U.S. Postmaster for West Union, and the owner of a highly popular inn and restaurant, appropriately referred to as the ''Bee-Hive.'' At the age of 60, Mr. Bee served as captain of the Doddridge militia which protected the area from Confederate forces, thieves, and outlaws.

In 1863, Mr. Bee was elected to the West Virginia State Legislature, defeating Joseph H. Diss Debar, the person who later designed the State seal of West Virginia, which is still in use today, without change.

Another contest that Mr. Bee won was being named the Ugliest Man in the State of West Virginia. For that victory, he was awarded a beautiful pocket knife, a proud possession which he was forced to relinquish a few years later when the State found a man whom it deemed to be even uglier.

In 1845, Mr. Bee originated the Ancient and Honorable Order of E. Clampus Vitus, ECV, of which he became Grand Lama. ECV was originally formed as a secret order for playing practical jokes, but as it spread across the country, it took on different purposes and missions. Today, ECV has become an important historic preservation society, with more than 100,000 members.

Mr. Bee also operated an important station on the underground railroad. He hid his guests in a nearby cave until it was filled, then, it appears, he used ECV to create a diversion so that the escaped slaves could be sent on their way to freedom.

What became the town of West Union was originally settled in 1807. It was incorporated on July 20, 1881, which means the town of West Union will be celebrating its 125th anniversary this summer. The town will be using this milestone anniversary in an effort to promote and celebrate the town's history and as a jump start toward the economic revitalization of the town. The festivities are planned for July 22, and they promise to be a time of fun, entertainment, and education as the town wants to share its unique and colorful history with the world.

The town of West Union has adopted as a slogan, ''We love our history—that's why we're still making it!'' With its history—and its energetic, creative residents, I am confident that the town of West Union will be making history for a long time into the future.

I wish them the best on their 125th anniversary.

HONORING RETIRING JOURNALIST DICK KAY

Mr. DURBIN. Mr. President, I rise today to honor Dick Kay, a man of great journalistic integrity. Many things have changed in the past 40 years, but from Martin Luther King, Jr., to Adlai Stevenson, from Iraq to the Daleys, from Watergate to the 1985 Bears, there has been one voice Chicagoans have consistently trusted for an objective and thoughtful perspective. Dick Kay has established